A Full and Authentic Report

OF THE TRIAL OF

The Hon'ble Mr. BAL GANGADHAR TILAK

B.A., LL.B.,

115

AT

THE FOURTH CRIMINAL SESSIONS 1897,

OF

The Bombay High Court,

BEFORE

The Hon'ble Mr. JUSTICE STRACHEY

AND

A SPECIAL JURY.

EDITED BY

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AND

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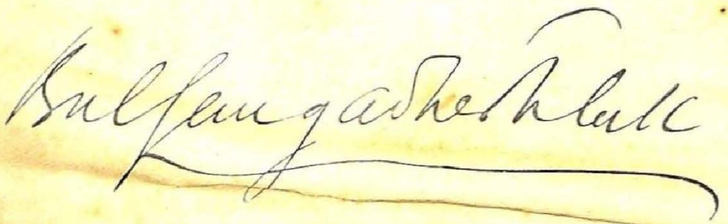

We claim the right to reason, the right to argue, the right to answer. The gaol door is no syllogism; the gaoler's key is no argument.—*Charles Bradlaugh.*

In England great reforms have always been slowly won. Those who introduced them first have been called seditious, sometimes sent to gaol as criminals. But no imprisonment can crush the truth.—*Ibid.*

B. G. Tilak.

Sentenced on the 14th September, 1897.

O! Mourn for the patriot prisoner,
In clanking chains, the man whose only wrong
It was he loved his country well, and dared
Speak Ind'as glory past, her happy state,
Afore, her noble ways, her higher laws,
Her might in days of yore, her sublime sacred rule
A tear for Tilak to cell condemned,
In the deadly darksome dungeon thrown,
With murd'rous villain, the incestuous beast,
He who sat erewhile where laws were made
And shone bright within the 'cademic walls,
Discoursing high on themes from the first dawn
Of the glorious Orb to Ind's present
Evil days, her grim and ghastly want,
The many woes, alas! she has endured
—Who knows how many more as yet in store?—
This, the man, doomed within iron bars!
They found him guilty fit for chained work
And be denied light and liberty.
Alas! Is it a crime to remember
Happier days or talk of events past,
Or say that we too had our history
Our own, in deeds of valour rich, in songs
The glory of mankind? Immortal Ind!
Dark days of gloom and doubt and fear, these!
Lion-hearted Tilak, let not thy heart sink,
A nation's heart beats within thine own,
A nation its tearful eyes uplifts to God—
For justice for thee and an ancient land.

RAM DASS.

("*The Hindu*," *Madras.*)

PREFACE.

We have much pleasure in offering to the public this volume containing a full and authentic report of the famous State trial, which took place in the Fourth Criminal Sessions of the Bombay High Court in September 1897. The trial of the Hon. Mr. Bal Gangadhar Tilak, Editor of the *Kesari*, will ever be a memorable event in the history of India, and it is worth while therefore to preserve the proceedings in a permanent shape. The Report of the Proceedings of the Case, including counsels' speeches and the summing-up of the Judge, have been chiefly taken from the short-hand notes of Mr. Ellis, who was specially retained by the defence for that purpose. The summing-up may now be taken to be 'Official' inasmuch as Mr. Justice Strachey is said to have accepted its general correctness, with the only exception of the word 'administrators' occurring in the twenty-third line of the Charge, page 7, which must therefore be omitted. Mr. Pugh's speech is given here substantially as reported by Mr. Ellis. The other portions have been carefully compared by Mr. Deshpande, assisted by Mr. B. Tirumalacharya, B.Sc., with his own notes taken at the time and with the reports in the Bombay Daily papers, and also with the Judge's notes of evidence. The history of the case before and after the trial is given in the introduction.

We take this opportunity to thank the editors who readily responded to our request and sent the issues of their papers containing notices of this case. An apology is due to some of them more particularly to the editors of the Vernacular papers whose articles could not be embodied in this book merely for want of space. Owing to the same difficulty only a few of the English papers have been included in this book. As a matter of fact almost the whole Indian press, English and vernacular, has noticed this case, but we could only select a few from each province.

The whole Native Press, barring two or three papers in Bombay, and one in Poona, has expressed dissatisfaction with the conviction. The latest issue of the *Hindi Punch* and *Bhoot* have two cartoons indicating the same view. The Anglo-Indian papers are divided. The *Statesman* (Calcutta), the *Indian Daily News* (Calcutta), the *Morning Post* (N.-W.P.), *Advocate of India* (Bombay), the *Champion* (Bombay), and the *Madras Times* condemn the conviction The *Times of India*, the *Bombay Gazette*, the *Englishman*, the *Civil and Military Gazette*, and the *Madras Mail* approve of it heartily ; so also the *Pioneer*, which however does not seem to be quite satisfied with the law as enunciated by the Judge.

For the excellent portrait of Mr. Tilak, and the cartoon from the *Arám* we are indebted to the enterprsing firm of Messrs. Vaidya Brothers, 73,

Lohar Chawl, Bombay; while the whole success of this undertaking is due to the untiring energy and hearty co-operation of Mr. Madhav Krishna Deshmukh, without which we could never have hoped to bring out this volume. We have also to express our deep obligations to the solicitors and friends of Mr. Tilak for supplying to us Mr. Ellis' report and other papers relating to this case. For the interesting sketch of Mr. Tilak's life, we are indebted to a friend of ours who has an intimate knowledge of Mr. Tilak's career, and for Appendix **C** on Section 124 A. I. P. C. to a well-known Vakil of the Bombay High Court.

The price of this volume has been purposely fixed very low in order to bring it within the reach of all classes of people, and what little balance may be left after defraying the necessary expenses will be made over to the Tilak Defence Fund. We must not forget to mention our obligations to the proprietors of the papers who have published our advertisement gratis.

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Cartoon from Arám.	

INTRODUCTORY REMARKS.

Men associated with the High Court for more than thirty years tell us that in their life they never knew any case which created as much stir among the people as the trial reported in this book. The press notices, which will be found at the end of this book, show that the whole intelligent population of India has ranged itself on one side or the other. Notwithstanding the acrimony this trial has unfortunately created between European and Native communities, neither of which can, for a long time to come, do without the other, it must be a matter of just pride for every true Briton that it has been possible, to at least a portion of the heterogeneous communities of this land, to exhibit from one end of the country to the other, a solidarity which would have been absolutely impossible without British rule and British education.

The law of sedition is entirely of modern origin. Printing was never known to the Hindu and the Mahomedan India, much less the public press. If a man then in power wished to communicate his wishes to the people at large he had them proclaimed by beat of drum or had written notices put up in villages and cities. In case of an ordinary man, the only medium was oral communication either in the bazar or in a temple or musjid or in a sabha or jamát specially called for that purpose. As the Government was almost always personal, any person guilty of disrespect to the ruling power could only be proceeded upon as a traitor. Sedition, as distinguished from libel or rebellion or treason, was unknown. Even in England, sedition is treated as a part of the law of libel, though the distinction between the two offences is now clearly recognised. In India the offence was created only in 1870, when section 124A was added to the Indian Penal Code. This section has a curious history which is given in Appendix C. It, however, remained a dead letter till 1891, when it was tested in the famous *Bangobasi* case. Sir Comer Petheram, the Chief Justice of the Calcutta High Court, who presided at the trial, was the first to interpret the section. Mr. Tilak's was the second case to come before an Indian High Court.

This fact, as well as the peculiar circumstances under which this prosecution was undertaken by the Bombay Government and the influential position of Mr. Tilak, who is recognised as a leader of the Indian community in the Dekhan and is the editor of the widely circulated Mahratti journal *Kesari* and the English journal the *Maharatta*, have invested this case with unusual importance.

The history of the case is shortly told. In 1885 a movement was set afoot for repairing the tomb of Shivaji at Raighur, which at last in 1896 took the shape of a festival in honour of Shivaji on his birthday. In 1897, owing to plague, the festival was not held on the birthday of Shivaji but on his coronation day, which happened to fall on the 13th of June. On that day, and on the previous and subsequent days, a long programme of prayers, hymn-singing, sermon-preaching or *Puran* and lecturing was gone through. A very condensed report of the proceedings, with a hymn sung on the occasion, was published in the issue of the *Kesari* of the 15th June. It was for this that Mr. Tilak was convicted of sedition.

On the 22nd of June Mr. Rand and Lieutenant Ayerst were murdered by some unknown person, which created intense excitement, especially

in the Anglo-Indian Community of Poona and Bombay. The Bombay Government gave sanction to prosecute Mr. Tilak on Friday, the 26th July, and Mr. Baig, the Oriental Translator, laid information before Mr. J. Sanders Slater, the Chief Presidency Magistrate of Bombay, on the 27th July. Mr. Tilak was arrested the same night in Bombay and placed before the Magistrate the next day. An application was made for bail soon after, which was strenuously and successfully opposed by Government. On the 29th a similar application was made to the High Court, which was disallowed, with permission to apply again. The case was committed to the High Court Sessions on the 2nd of August and an application for bail was again made to Mr. Justice Budrudin Tyebji, the sitting Judge in Chambers, by Mr. Davur of the Bombay Bar, instructed by Messrs. Bhaishankar and Kanga. The application was, of course, very strenuously opposed by the Advocate-General. The Judge, however, admitted Mr. Tilak to bail. His Lordship, in delivering judgment, said :—

> That although the discussion of the application had taken some considerable time, it appeared to him that he could dispose of it very shortly on grounds which were perfectly well recognized. He thought all legislation in regard to the release of accused parties on bail was based upon the anxiety of the Legislature to secure the attendance of the accused at the time the trial came on. The leading principle of jurisprudence was that a man was not to be presumed to be guilty until he had had a fair trial and was found to be guilty. But at the same time another leading principle that the Judges had to bear in mind was that there ought not to be any miscarriage of justice by the accused absconding or not appearing when the case was called on for hearing. The question he had to consider was whether he had any ground to believe that Mr. Tilak would not be forthcoming at the next Criminal Sessions when the case would be called on, and whether there was any danger of his avoiding the trial, for, if such was the case, then it was his duty to prevent such danger by keeping him in jail in order that the ends of justice might not be defeated. On the other hand, if it was absolutely or morally certain that the accused would be forthcoming at the trial, it would be contrary to the principles of justice to keep him in jail till the trial came off. In order to ascertain whether he would be forthcoming or not, it was material, as it was pertinently pointed out by the learned Advocate-General, to consider the three leading questions, first, as to the gravity of the offence with which the accused was charged; secondle, as to the nature of the sentence with which he might be punishey; and, thirdly, as to the evidence which was before the court to see whether it was of such an overwhelming character as that the accused must necessarily be convicted, and that in order to avoid the punishment he might not be forthcoming. In this particular case no doubt the charge was serious, the highest penalty that could be awarded by law being transportation for life, but at the same time there was the alternative penalty of a similar description reduced to a very small term of imprisonment, though still a very considerable penalty. Then, secondly, as to the charge, it was no doubt of a very serious character, being no less than that of disaffection and incitement against Government. Though the charge was of a serious character, yet it was not one which could by any means be put on a level

with the charge of murder or rape which might carry any amount of moral turpitude. As regarded the evidence in this particular case there was no doubt, as the Advocate-General very rightly remarked, that a great deal would turn upon the articles in question. The question for consideration for the Judge and Jury would be whether these articles would bear the interpretation which was sought to be put upon them by the Advocate-General on behalf of the Crown, or whether they were capable of an innocent explanation such as that which had been suggested on behalf of the accused by Mr. Davur. His Lordship felt that at that stage of the case it would be not only inconvenient but extremely improper for him to express anything like a positive opinion one way or another—extremely inconvenient, because when the accused is placed on trial it would not only materially affect his defence, but embarrass both the Judge and Jury who tried the accused, and his Lordship would not, therefore, attempt to enter into the merits of the case beyond what appeared to be absolutely necessary for him to consider in order to arrive at a conclusion as to whether or not there was some chance of the accused succeeding in establishing that the true construction of the articles was such as had been suggested on his behalf. He would refer to the merits of the case, without, in the slightest degree, attempting to lay down that this or that was the correct view of the articles, simply with a view to see whether or not they were capable of the construction sought to be placed upon them by one side or another. There were two articles, the first consisting of a discussion as to the merits of Shivaji in regard to the murder or assassination of Afzulkhan. The learned Advocate-General had said that the article was really a covert incitement to murder, whereas Mr. Davur suggested that there was nothing in the article except that it contained discussion of a quasi-moral character as to the exact position of a man who committed a political murder of the sort indicated in that article. It would not be right to say anything more than this since it was a matter fairly for the Jury, and his Lordship did not at that stage desire to say that the phraseology of the articles was such as would necessarily lead to the conviction of the accused. Then as regards the other article, which consisted of certain *shloks* supposed to have been uttered by Shivaji and addressed to his people, the explanation sought to be given was that it had nothing to do with the British Government of the present day. His Lordship was very reluctant to express any opinion in the matter which was to be tried before a Jury, but as it was necessary to say something upon it, he did not quite easily see that it could be shown that it did not refer to the British Government. The remarks appearing in the article about the administration of justice, enlargement of the spleen, outrages on railways, and drain of the wealth and such other things, and especially the word *gora* (white) man, which was in common parlance used for Europeans, appeared to his Lordship to show that Shivaji was supposed to address not to the people of bygone generations, who had existed before him and the Mahomedan rulers, but that he (Shivaji) was addressing the people of the present generation. But still there remained the question whether the words and expressions were of that character which must necessarily bring about the

conviction of the accused. Again, his Lordship was unwilling to express an opinion of that sort, but he might observe that it was capable of being argued that all that merely referred to general complaints in regard to miscarriage of justice, which might or might not have taken place. Whether there was any justification of the charge his Lordship did not know, but, nevertheless, it was a question which seemed to him to be pre-eminently one for the determination of the Judge who would preside at the Sessions, and the Jury who would have all those articles explained to them by the Judge, and who would have to bring to bear upon them their own views, their own knowledge of the world, and also that evidence which would be adduced on behalf of the accused. The conclusion, therefore, his Lordship had arrived at was that the articles in question to which he so unwillingly and reluctantly referred, and about which he desired to say clearly once more that he gave no positive opinion one way or the other, were not necessarily of such a character as to lead one to the irresistible conclusion that the man responsible for such articles must be convicted upon them. That being so, and applying the three tests so lucidly laid down in the cases which had been cited, his Lordship found that, though the charge was a serious one, it was nevertheless one which might be visited with a very much smaller punishment than transportation for life. The first article, as remarked above by his Lordship, was one which might or might not be capable of an explanation and which would be for the Jury to consider, and as regarded the other, which evidently referred to the Government of the present day, it might or might not be capable of an explanation such as had been shadowed forth by the defence. That being so, his Lordship would be departing from a well-established principle upon which the courts acted if he ordered to keep the accused in jail until his trial, which was to take place a month hence, and to handicap him from giving instructions to his solicitors, even if those instructions were not given within the hearing of the jailor. In a matter of that sort the court had to balance the consideration as to whether the ends of justice would be defeated if bail was granted. His Lordship did not think so, because he could not believe that a gentleman in Mr. Tilak's position would not be forthcoming at the trial. On the other hand, he could quite see that the ends of justice might be defeated if he refused to grant bail, for it was just possible that if he was imprisoned for a month it might ultimately be found that he was not guilty. His Lordship thought that he should best exercise his judgment if he admitted the accused to bail, and with that view he asked the learned Advocate General if he had anything to say in regard to the amount of the bail. He considered that the bail ought to be substantial, but not prohibitive. If he suggesaed fifty thousand rupees, he thought that it ought to be a sufficient amount to secure Mr. Tilak's presence at the trial." The bail was immediately given and Mr. Tilak enlarged.

The case came on for hearing in due course on the eighth of September and lasted for a week. Mr. Pugh, of the Calcutta Bar, assisted by Mr. Garth, defended Mr. Tilak, and the Hon'ble Mr. Basil Lang, the Advocate-General, conducted the prosecution, instructed by Mr. Nicholson, the Public Prosecutor, and Mr. Moriarty, the Legal Remembrancer to

Government. Mr. Justice Strachey presided at the trial, and the Jury, as will be seen from the report, consisted of five European Christians, one European Jew, two Hindus, and one Parsee. The six Europeans returned a verdict of guilty, and the three Native jurors of not guilty. The Judge accepted the verdict of the majority and sentenced Mr. Tilak to eighteen months' rigorous imprisonment. When the Jury had retired to consider their verdict, an application was made to the Judge on behalf of the accused to reserve certain points of law to the Full Bench, which was refused. Similar application to the Advocate-General, subsequently made, met the same fate. On the 17th of September 1897 an application was made to the High Court for a certificate that the case was a fit one for appeal to the Privy Council. This application was heard by Sir Charles Farran, C. J., and Candy and Strachey, JJ. Leave was refused.

Such is the history of this case, which is unfortunate in its inception, in the incidents accompanying its trial, and in the way it ended. The law it lays down is more than doubtful, and, in one respect at least, it establishes a dangerous precedent.

If the prosecution of Mr. Tilak had been determined upon by the local Government on reasons of State, after independent mature deliberation, no one would have any right to complain. But who that has followed the development of events in Bombay does not know the origin of this prosecution? One has only to turn to the files of the *Bombay Gazette* and the *Times of India*, and to the Report of the Parliamentary proceedings since the Diamond Jubilee, and he will be convinced that the hand of the Bombay Government was forced by the India Office, which in its turn was egged on to it by the Bombay morning papers, deriving their inspiration from their local correspondents of the type of "Justice" and "Shackles," whose interesting productions show how strong is their personal animus against Mr. Tilak. These forces would have been powerless, had not advantage been taken of the panic among the European community created by the murder of Mr. Rand and Lieut. Ayerst. To the absolute surprise of the Indian community the murders were exaggerated into premonitions of rebellion, and a conspiracy of the Poona people was at once postulated. Persons, whose ignorance of the feelings and aspirations of the educated Indian was only rivalled by their boastful presumption, got the ear of the Government and the prosecution followed.

The *Times of India* played the same part in this case as the (London) *Times* did in the case of Mr. Parnell, the Irish patriot. The ball was set rolling by a letter signed "Justice," published in its issue of the 19th June. On the 25th, the paper took the responsibility on itself of pronouncing Mr. Tilak's writings in general to be tinged with disaffection and found fault with the Government of Bombay for having nominated him to the Legislative Council. On the 28th of June a letter signed "Shackles" was published, which distinctly hinted that Mr. Tilak had something to do with the Poona murders. The same issue contained a leader in which the charge was more explicitly made. On the 29th, in a leaderette, the Shivaji movement was condemned. On the 30th June, in a note appended to a letter in defence of Mr. Tilak, the editor distinctly charged him with "deeper depths of disaffection." Again, on the 5th of July, a long leader attributed the murders to the *Kesari* and other Poona papers. On the 6th July another leader appeared asking Government to take action under Section 124A. These views, confirmed

and expanded by the *Bombay Gazette*, which outstripped its contemporary in violence of language, and adopted without question by the London *Times* and some other influential journals of England, had their desired effect in ill-informed England, though not in India. On the 9th July, Sir E. Ashmead Bartlett and Mr. Howell, Members of Parliament, asked the Secretary of State what action he was going to take in respect to the nomination of Mr. Tilak, "who had made speeches inciting to" rebellion, besides "publishing attacks upon the British authorities." The next day Sir E. Bartlett repeated the question. Then the matter was next taken up by that strange "Friend of India," Sir M. Bhownaggree, who put a long question setting out at length an exaggerated version of the very Report on which Mr. Tilak was subsequently tried, and asked "whether any steps have been taken by the local authorities to stop such systematic training of large numbers of people and students, and the incitement of them to such actions as had led to the assassination of Mr. Rand and Lieutenant Ayerst within a week of the last Shivaji celebration." This *ex-parte* verdict of the Parsee Knight on the guilt of Mr. Tilak was with very little qualification stamped with the authority of the Secretary of State for India.

With these facts before us is it unreasonable to suppose that the prosecution was the result of the excitement created in England by the incessant venemous outpourings of the Bombay morning Anglo-Indian papers? Does not this very case furnish a striking illustration of the precariousness of the "boasted safeguard" against the "stifling of the liberty of expression and criticism," which the *Pioneer* consoles itself to possess "in the fact that the sanction of Government is a necessary preliminary to a prosecution for sedition?"

We now pass on to some of the incidents of the trial which have made the case more unfortunate. It was entirely prejudged. We have already seen that the belief in the complicity of Mr. Tilak in the Poona murders found sanction even in the India Office. Europeans in Bombay believed, and perhaps now believe it, as gospel truth. The papers which had given origin to this belief did not stop writing about the case even after it came before the Court. An article under the heading of "Veiled Sedition" and another under that of "Criminal Folly" were published in the *Times of India*, and the *Bombay Gazette* kept the ball rolling by references to its London correspondent's letters and otherwise. Considering the compactness of the Anglo-Indian society in Bombay, as in other parts of India, and the enormous influence these papers have over its members, who can say that everything that could be done had not been done to prejudge the case? Even Europeans of high culture, undoubted honesty, and fairness of mind were not in a mood to allow anybody to suggest anything that would upset their belief in Mr. Tilak's guilt. This the writer knows by his own experience, and yet the learned Judge seriously told the jurymen that in bringing the case before them, the Government had secured a 'calmer atmosphere' for the trial.

This brings us to another unfortunate incident,—the constitution of the tribunal.

The trial was for sedition, an offence which, in the words of Mr. Justice Strachey, "consists in exciting or attempting to excite in

others certain bad feelings towards the Government." Now, the question arises, how is a juror to determine, in a given case, whether such feelings were excited or not. Obviously, that depends entirely on the knowledge he has of the nature, habits, feelings, and aspirations of those whose feelings are said to have been excited and on the ability he has to put himself in their position. Even then, there must be much room for difference of opinion. This is well recognised in England. As a great constitutional lawyer, Mr. Dicey remarks: "It is quite clear that the effect of English law, whether as regards statements made about individuals or the expression of opinion about public affairs or speculative matters, depends wholly upon the answer to the question, who are to determine whether a given publication is, or is not, a libel." "Whether, in any given case, a particular individual is to be convicted of libel depends wholly upon the judgment of the jury." And in this respect, the law in India does not differ from that in England. Mr. Justice Stephen, speaking of Section 124A in the Legislative Council, said: "This law is substantially the same as the law of England at the present day (1870), though it is much compressed, much more distinctly expressed, and freed from a great amount of obscurity and vagueness, with which the law of England is hampered." Therefore, in all sedition cases, everything depends on the Jury.

How did the matter stand in this case? Out of the nine jurors, there were only two whose mother-tongue was Marathi, the language in which the articles in question were written, and there was a third Parsi juror, who, being an Indian, knew Marathi. These alone could have understood the spirit of the passages; because the other six jurors, five of whom were European Christians, and the sixth, a European Jew, knew nothing of the language or the people among whom the *Kesari* circulates, and had entirely to depend on translations, disputed in some particulars, which, the presiding Judge once thought, were important. Even if the translations had been undisputed, who that knows the difficulty of translating vernacular passages into English can honestly say that the spirit of a Marathi passage, especially when it is a poem, could be properly judged by their translations? Even Max Müllers and Bühlers have admitted this difficulty. And, if not the spirit of a passage what else is there to determine its seditious or innocent character?

This difficulty could, in a way, have been met by calling Marathi scholars to give evidence of the impressions they derived from the passages. As a matter of fact, if the prosecution, on whom this duty lay, had chosen, it could have been done very easily in this case, because the Reporter to Government on Native papers, whose scholarship is well known in this country and who enjoys the full confidence of Government was in Court throughout the trial, busy instructing the Legal Remembrancer.* The Judge once thought, of himself calling such a witness, but unfortunately changed his mind.

This was not all. What has caused the greatest dissatisfaction is the interpretation the Judge put on Section 124A of the Indian Penal Code.

* This gentleman was the chief witness for Government in the sedition (*Poona Vaibhav*) case, which was tried in the same Sessions immediately after this.

Even those that chuckle over Mr. Tilak's conviction have to do it on the principle of the end justifying the means. The exposition of the law, even they find it difficult to support.

The Judge made a distinction between Government and its measures. He said the only criticism allowed by the section was that of Government measures. "So long as a man confines himself to that he will be protected by the explanation. But if he goes beyond that, and *whether in the course of comments upon measures or not* holds up the Government itself to the hatred or contempt of his readers, as, for instance, ... by accusing it of hostility or indifference to the welfare of the people, then he is guilty under the section and the explanation will not save him." Thus when a man, even while criticising a measure of Government, says that the measure betrays the indifference of Government to the welfare of the people, he can be sent to jail at its option. The law of defamation gives liberty to comment on the character of a person, so far as it is discovered by his public acts, but under the present interpretation even that privilege is not allowed in speaking of Government. Is this not strange?

The Judge defined 'disaffection' to mean "absence of affection, hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. Disloyalty is, perhaps, the best general term comprehending every possible form of bad feeling to the Government . . . . The amount or intensity of the disaffection is absolutely immaterial, except, perhaps, in dealing with the question of punishment. If a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section." Again he said "the test to be applied is whether these people were trying to stir up a rebellion or feeling of enmity against the Government." It will thus be seen that according to Mr. Justice Strachey disaffection is a generic term applied to different gradations of bad feelings, the lowest being 'absence of affection' and the highest rebellion. It is obvious that absence of affection need not necessarily be disaffection. This has been accepted by the Judge since. But he, supported by the Chief Justice and Mr. Justice Candy, has held that the use of the expression did not mislead the Jury. With all respect for the Judges, this decision cannot be accepted. The Judge not only mentioned absence of affection as the first member of the series, but also went on to say that the degree of feeling is immaterial. How can any one be sure that the Jury did not think that the absence of affection was enough for conviction. Cases tried by jurymen are always conducted in such a manner as not to allow anything to be said in their presence which would *possibly* mislead or prejudice them; for they are not supposed to be adepts in the art of judicial jugglery which enables the Judge to allow or not, as he pleases, any knowledge of his to influence his decision. As an example we may quote the provision of law that the previous conviction of a prisoner should not be brought to the notice of jurors till after his conviction. Moreover, the writer of this Introduction saw with his own eyes one of the jurors writing on a piece of paper the words absence of affection, &c. The same thing seems to have been noticed by another barrister who was present at the trial. (*Vide* p. 12 of Press Notices—Legal Aspect). After this, how can one be sure that the jurors were not misled by the Judge's wide definition?

Then, again, the way in which the Judge charged the Jury has come in for a large share of adverse comment. There is no doubt, before twenty lines of the charge are read, the Judge's decided leaning for conviction becomes apparent. He made no secret of his opinion. No one can complain of this, because the law distinctly allows it. What is unfortunate is that he should have allowed the jurors very little choice, particularly as this was an offence the decision of which was peculiarly within their province. He, in so many words, asked them to at once find the prisoner guilty. Here is what he said :—"I do not think you will find any difficulty in deciding. You are simply to look at it in the way in which it has been placed before you." (See charge p. 1, *infra*).

This is after all not a serious defect. The greatest injustice done to the prisoner was that the Judge travelled beyond the evidence and laid stress at every step on facts about which there was not a scrap of evidence. In this respect the case forms a dangerous precedent. The reader will find that the utmost possible stress was laid throughout the charge on the state of excitement, which is said to have been prevalent in Poona on the 15th June, the date of the publication of the *Kesari*. Read the proceedings how you will, no evidence will be found on which the statement might be legally based. The Judge, no doubt, said he got his information from the articles put in the case. It is obvious that the Judge was not right in making use of the evidence put in for the special and the only purpose of showing animus for proving other facts. So far as the witnesses go, they simply said that there was plague in Poona. When it began, when it ended, what were the measures to suppress it, whether there were soldiers with the searching parties, when the searching began, and when it closed, whether there was any excitement and, if so, when it began, and when it subsided,—these questions never were touched by the evidence given. Even the articles put in for the purpose of proving the animus do not show what was the state of feeling on the 15th June. As a matter of fact, the search by soldiers had ceased nearly a month before,* and considering the extreme indifference of the average Indian there is no doubt the excitement must have ceased long before the 15th June. The Judge did not stop even here. He mentioned the murder of Mr. Rand and Lieutenant Ayerst not, as one should have expected, to impress on the minds of the jurors the necessity of getting rid of their prejudice against the accused, but as an indication of the excitement which the Judge imagined there was on the 15th June. The history of the origin of the case with which the reader is already familiar leaves no room for doubting how this should have affected the verdict.

Then, again, the Judge, in alluding to the circumstances under which the articles were published dwelt at length on every circumstance telling against the accused, but failed to draw the attention of the Jury to some very important considerations telling in his favour. For instance, he did not at all tell them why it was that Shivaji celebration took place on the 15th June. This fact was very important because it would have satisfactorily explained the short interval between the publication of the articles and the Poona murders. Sufficient stress was not laid on the fact that the articles in question were *reports* of speeches given at the celebration. It will be seen that sometimes he treated them as ordinary

* The searching actually ceased on the 20th of May. (*Vide Exhibit* **24**).

articles and sometimes as reports. At one time he asked the Jurymen to bear in mind the nature of the readers of the *Kesari*, and at other times of the hearers of the lecture as it suited his purpose. This confusion must necessarily have prejudiced the accused on the question of intention. In discussing the animus, the Judge adopted a strange reasoning. He said that anything Mr. Tilak might have done before the 15th June was not incompatible with a seditious intent; Mr. Tilak might have shown his high regard for the Queen; he might always have evinced great respect for the Governor; he might have loyally supported the plague measures; all this was not "incompatible with disloyalty." This is only a recognition of mutability of human nature. But all law presupposes consistency in human conduct. Otherwise the Judge's own ruling that the previous writings of the prisoner were evidence of his animus would be absurd. If anything said or done is not incompatible with a bad motive, it may well be asked if it is incompatible with a good motive. In this connection the Judge's admission of his inability to account for what he considered Mr. Tilak's sudden change of front with regard to plague measures is significant. Not only that; while there were four speakers whose speeches were reported in the *Kesari*, he made use of one man's speech in interpreting that of another. The culminating point was reached when he came to discuss Mr. Tilak's own speech. To determine Mr. Tilak's seditious intention, he asked the Jurors to remember the allusion to the French Revolution by Mr. Jinsivale!

Both the Advocate-General and the Judge began by discussing the song which was said to be the most obnoxious of all. But the convicting Jurors were not told, nor did they themselves know that it was written in such a high-flown style that the people whom the Judge had specially in his mind could not understand. This fact was very material because the whole point of the learned Judge's remarks was the inflammable nature of those for whom the poem was meant. It would have also induced the Jurors to make, as they were bound to do, some allowance for the hyperbolical verbiage of the poet. The reader need not be told what different impressions are made by the same thought when expressed in prose and when in poetry. Even a change of expression makes a world of difference in the effect produced by a passage. English writers have recognised this. Dr. Bain, in his book 'On teaching English' tells us how a thought expressed in Saxon English becomes much more pointed and forcible than in Classical English. In this case the poem, which appeared in the correspondence column, was treated as an editorial

These are some of the incidents which have caused dissatisfaction. The way the case ended was also unfortunate. The verdict of guilty was brought in by six Jurors, three being for not guilty. If one of the six had gone to the other side, the Judge would have been obliged to discharge the jury. Such being the law, it is impossible to say that in accepting the verdict, Mr. Justice Strachey acted more wisely than the Chief Justice of Calcutta, who, realising the peculiar nature of sedition cases, refused to accept anything but a unanimous verdict, even when the majority was seven against two.

However, Mr. Tilak has been convicted. For the present at least the result must be loyally accepted.

In conclusion, we must ask the Indian reader into whose hands this book might fall, not to countenance the thousand and one wild rumours about the High Court with which the air is so unfortunately thick at present. It may be that the political sympathies of the Judge have unconsciously misled him. As Lord Herschell once told the House of Lords "Judges do not live up in a balloon or in the air and descend to take their seats on the Bench in the morning and again disappear in the evening." They have their own views and sympathies, which do sometimes affect thier judgment, without their knowing it. It is to minimize the chances of such a thing happening that great importance is attached in the judicial line to the standing of a judge at the Bar and on the Bench. The accomplished judge of undoubted ability, integrity and learning, who convicted Mr. Tilak, is perhaps the most junior lawyer that ever presided over any important State trial in England or India. But that should not make us forget the undoubted impermeability of the High Court to outside influence, and it would be nothing less than criminal for any educated man to tolerate any absurd impression to the contrary.

It is, perhaps, necessary to add that no one regrets more than the present writer the adverse nature of his criticism which is purely from the legal stand-point. The writer did not know Mr. Tilak personally before the trial; nor has he any party to serve.

S. S. SETLUR.

A SKETCH OF THE LIFE

OF

The Hon'ble Bal Gangadhar Tilak, B.A., LL.B.,

Editor and Proprietor of the *Kesari* and the *Mahratta*.

"Your business is with action alone; not by any means with fruit. Let not the frui of action be your motive (to action). Let not your attachment be (fixed) on in action. Having recourse to devotion, O Dhananjaya, perform actions, casting off (all) attachment, and being equable in success or ill-success; (such) equability is called devotion. Action, O Dhananjaya, is far inferior to the devotion of the mind. In that devotion seek shelter. Wretched are those whose motive (to action) is the fruit (of action)."—Telang: *Bhagavadgita*, Ch. II., 47-9.

If there is one man at present, whose name is a household word throughout India, it is the Hon'ble Mr. Bal Gangadhar Tilak. The *Kesari* is the most popular and widely circulated newspaper in the Marathi language, and Mr. Tilak, its editor, has, for a long time, been known as one of the most honest and fearless critics of Government. He is a recognized leader of the orthodox portion of the Hindu community, and his name carries an amount of influence amongst all people in the Deccan. He also had many enemies, and was subjected to plenty of abuse at their hands; but the action of the Bombay Government, in prosecuting Mr. Tilak for sedition, has, for the time being, united all parties. Mr. Tilak is now looked upon by all natives of India as a martyr in the struggle for the freedom of the Indian press. His pluck and energy in opposing the powerful forces marshalled against him as well as his fortitude in bearing incarceration have evoked admiration and sympathy even from those who had hitherto been his opponents. The prosecution and conviction of Mr. Tilak open a new phase not only in his own career but also in the political life of the Indian nation. The question we have now to face is what is to be the attitude towards each other of the rulers and the ruled in this country. Can the natives of India ever aspire to get equal rights with the ruling class, or are they always to remain mere hewers of wood and drawers of water? Such is the problem which is now being forced upon the public attention by the Tilak trial; and it is a problem which behoves every one of us to ponder over calmly and deeply.

The Tilak trial will be a memorable event in Indian history. The man who figures in it has already earned for himself a place in the annals of his country. The story of that trial may, therefore, be fitly preceded by a brief sketch of the life of the man. The facts are few, but they will be sufficient to show that Mr. Tilak is essentially a self-made man and possesses in him qualities which in other times and countries would have at once marked him out as a leader of the people. Mr. Tilak belongs to a race that has already made a mark in the Maratha history. He is a *Chitpavan* Brahmin, and was born at Ratnagiri on 23rd July 1856. His father, Mr. Gangadhar Ramchandra Tilak, was at first an Assistant Teacher at Ratnagiri and then Assistant Deputy Educational Inspector at Thana and Poona. Gangadharpant

was a very popular teacher of his time, and had published works on Trigonometry and Grammar. He did not, however, survive long to superintend the education of his son. By the death of his father in August 1872 young Bal was left an orphan at the age of 16. He was, however, well taken care of by his maternal and paternal uncles and was able thus to continue his English studies uninterruptedly so as to pass the Matriculation four months after his father's death. He joined the Deccan College and passed the B. A. with honours in 1876, and the LL. B. of the Bombay University in 1879. While studying law he contracted friendship with the late Mr. Agarkar, afterwards the Principal of the Fergusson College, and the two youths passed many a sleepless night in deliberating upon the best scheme they could start for benefitting their countrymen. They eventually formed a resolution never to accept Government servivce, but to start a private high school and college for the purpose of imparting cheap and healthy instruction to the younger generation. They were, of course, laughed at by their fellow-graduates for their Utopian ideas, but neither ridicule nor external difficulties could damp the ardour of the youthful enthusiasts. They cogitated upon various schemes, but could definitely fix upon none, owing chiefly to want of means for making a start. At this juncture, an older man of congenial spirits came on the scene. The late Mr. Vishnu Krishna Chiplunkar, popularly known as Vishnushastri, had just resigned Government service because he could not pull on with his superiors, and come to Poona with a firm determination to start a private high school. The son of an illustrious father, he was already famous as the best Marathi prose writer of the time. Messrs. Tilak and Agarkar, who were then studying in the Deccan College, having heard of Mr. Chiplunkar's plan, conferred with him, and the trio were soon joined by another man possessing remarkable energy and intelligence, the late Mr. M. B. Namjoshi. Messrs. Chiplunkar and Tilak, with the aid of Mr. Namjoshi, started the Poona New English School on 2nd January 1880, and acted as teachers on a paltry remuneration. Mr. V. S. Apte joined them in June and Mr. Agarkar at the end of the year after passing his M. A. The five men did not confine their activity to the school alone. Simultaneously with the school the two newspapers, the *Mahratta* and the *Kesari*, were started, and they at once made their mark in the field of native journalism. Mr. Vishunshatri Chiplunkar also established the two printing presses, the *Arya-Bhushan* for the use of the two newspapers, and the *Chitrashala* for the purpose of encouraging fine arts. With these various undertakings the five men had enough to do for some time, and they pushed them on manfully. The New English School soon attained the first rank among Poona schools ; the *Kesari* and the *Mahratta* became the leading papers in the Deccan, the *Arya-Bhushan* Press proved a very prosperous concern, while the *Chitrashala*, in spite of some imitations, still maintains its reputation as the only institution of its kind in Poona.

This band of patriotic workers, however, had soon to pass through an unprecedented ordeal. The *Kesari* and the *Mahratta* published some articles, severely criticizing the treatment given to H. H. Shivajirao, the late Raja of Kolhapur, and the then Karbhari of Kolhapur, Mr. M. W. Barve, consequently prosecuted Mr. Tilak and Mr. Agarkar as editors of the *Mahratta* and the *Kesari* for defamation. While the case was pending, Mr. V. K. Chipulunkar died, and soon after his death Messrs. Tilak and Agarkar were convicted and sentenced to simple

imprisonment for three months. Mr. Apte and Mr. Namjoshi were thus left behind to manage the various concerns during this time of trouble; but they did not shrink from it. The Kolhapur trial only served to increase the popularity of the school and the two papers. Assistance came from all sides. After Mr. Chiplunkar's death, Mr. Tilak was, for a long time, the guiding spirit, and Mr. Namjoshi, the active member of this small band, while Messrs. Agarkar and Apte were engaged in the literary part of the duties. In the latter part of 1884 they resolved to give themselves a statutory existence, and with that view they formed the Deccan Education Society of Poona, with themselves as its first body of life-members. They were soon joined by the late Professor V. B. Kelkar, Professor Dharap, and Professor M. S. Gole, while later on came Prof. Gokhale, Prof. Bhanu, and also Prof. Patankar, who has since then resigned. In 1885 the Fergusson College was established under the auspices of the Deccan Education Society, and all the life-members agreed to serve in it as professors for 20 years. The Society's institutions soon became prosperous. They purchased the Gadre Wada and the Khabutarkhana play-ground. The Nana Wada was later on handed over to them by Lord Reay in accordance with a promise of Sir James Fergusson's Government; and they have now erected a splendid structure near the Chaturshingi for the accommodation of the college. They have also been receiving annually a handsome grant from Government; and in every way the New English School and the Fergusson College have come to be recognized as model institutions in the Deccan. Mr. Tilak's connection with the school and college, however, ceased in 1890. The causes that brought about this disruption are many and various, and this is not the place to go into them. The process of disintegration had, in fact, begun long before. The Chitrashala had become an independent concern even in the life-time of Vishnushastri. In about 1886 difference of opinion on social and religious questions between Mr. Tilak and Mr. Agarkar led to the latter's resigning his editorship of the *Kesari* and starting a paper of his own, the *Sudharak*. It was then found that the interests of the school and college were not identical with those of the papers, and so a partition was effected by which the *Arya-Bhushan* Press and the two papers became the private property of Mr. Tilak, Professor Kelkar, and Mr. H. N. Gokhale—Professor Kelkar being the editor in charge of the two papers. This state of things lasted till the end of 1890, and would have continued indefinitely if fresh differences had not tended to increase the rupture. This time the differences chiefly related to the principles which should regulate the conduct of the life-members and the management of the school, and were brought to a head by Professor Gokhale's appointment to the Honorary Secretaryship of the Poona Sarvajanik Sabha in 1889. Mr. Tilak was from the first strongly in favour of a jesuitical mode of life, and insisted upon an absolute rule that life-members should devote all their time and energy to their proper function as teachers. Some of his colleagues, however, did not agree with him, and consequently he severed his connection with the Society by sending in his resignation in November 1890. Mr. Patankar then resigned, and Mr. Namjoshi ceased to take any active part in the management. As a professor, Mr. Tilak was very popular. He was Professor of Mathematics, but he also acted at intervals as Professor of English, Sanskrit, and Science. Thoroughness was his motto; and whatever was the subject he took in hand, his pupils had never any cause for complaint. As a mathematician he was unrivalled, and often reminded his pupils of the late

Professor Chhatre of the Deccan College. His resignation was a heavy loss to the college in more ways than one, and it will be a long time before his place can be adequately filled up.

After freeing himself from the drudgery of school, Mr. Tilak resolved to devote the whole of his spare time to a life of public usefulness. It was a singular coincidence that Mr. Tilak obtained more leisure just at the time when the Age of Consent Bill was brought before the Viceroy's Council. Mr. Tilak rushed into the controversy with his wonted ardour. Not that he was ever opposed to the principle of social reform, but he disliked reform by coercion. The Age of Consent Bill, however laudable its aims and objects might have been, was virtually an attempt to force reform on Hiudu society by Government interference; and many sincere advocates of social reform were consequently opposed to it. Mr. Tilak's attitude in this matter at once brought about a division of Poona society into two camps, the orthodox and the reformers, and the rupture between the two widened as new differences led to fresh quarrels. After resigning his place in the college, Mr. Tilak started a law class, the first of its kind in this Presidency, for the purpose of preparing students for the High Court and District Pleadership examinations. He also took over charge of the *Kesari*, while Professor Kelkar remained editor of the *Mahratta* till about the end of the year. Professor Kelkar, however, had soon to discontinue his connection with the papers altogether, owing to increased work in college, and Mr. Tilak became the editor of both. A year later there was a partition between them of the press and the papers, and Mr. Tilak became the sole proprietor and editor of the *Kesari* and the *Mahratta*, while Professor Kelkar and Mr. Gokhale remained owners of the *Arya-Bhushan* Press. Such were the vicissitudes through which the two papers whose proprietor Mr. Tilak is now undergoing a sentence of imprisonment, had to pass since their birth. The *Kesari* especially has steadily risen in popularity since Mr. Tilak took it in hand, and its circulation now far exceeds that of any other English or Vernacular paper in the Presidency.

Mr. Tilak was not a man to waste the whole of his time in ephemeral writing. He now resolved to turn his leisure to some account and devoted himself to his favourite books the "Bhagavadgita" and the "Rigveda." As a result of his researches in the chronology of the Vedas, he wrote a paper on the antiquity of the Vedas as deduced from astronomical observations. He sent a resumé of this paper to the International Congress of Orientalists, which was held in London in 1892, and published the whole paper next year in a book form under the title "The Orion; or, the Antiquity of the Vedas." Mr. Tilak in this book traces the Greek tradition of Orion and also the name of the constellation to Sanskrit Âgrâyana or Agrahâyana; and as this latter word means the beginning of the year, Mr. Tilak concludes that all the hymns of the Rigveda containing references to that word or the various traditions clustering round it must have been composed before the Greeks separated from the Hindus and at a time when the year began with the sun in the constellation of Orion or Mrigashirsha, *i. e.*, before 4,000 B. C. It is impossible to do justice to his wide researches and masterly argument in a sketch like this, but everybody who has a curiosity on the subject ought to go through the book himself. The book was highly praised by European and American scholars, and although Mr. Tilak's conclusions

have not yet met with universal acceptance, many Orientalists, such as Max Müller, Weber, Jacobi, and Whitney have acknowledged the learning and the originality of the author. After the book was published, Mr. Tilak carried on for some time a friendly correspondence with Prof. Max Müller and Weber on some of the philological questions discussed by him, and the result was that both parties agreed that there was much to be said on each side. Professor Whitney of America only a short time before his death in 1894 wrote an able article in the Journal of the American Oriental Society in which he highly eulogized Mr. Tilak's theories. Similarly Dr. Bloomfield, of John Hopkins University, in an anniversary address, spoke about Mr. Tilak's book in these terms :—

"But a literary event of even greater importance has happened within the last two or three months—an event which is certain to stir the world of science and culture for more than the beatific reminiscences. Some ten weeks ago I received from India a small duodecimo volume, in the clumsy-get-up and faulty typography of the native Anglo-Indian press. It came with the regards of the author, a person totally unknown to fame. I had never heard his name ; Bal Gangadhar Tilak B. A., LL. B., Law Lecturer, and Pleader, Poona. The book is published by Mrs. Radhabai Atmaram Sagoon, Bookseller and Publisher, Bombay. The title is " Orion or Researches into the Antiquity of Vedas." It will be understood that the entree of the title volume upon my horizon was not such as to prejudice me in its favour, and secondly, I placed it where it might be reached without too much effort in the drowsy after-dinner hour, to be disposed of along with much second class matter, such as reaches a scholar through the channels of the Postal Union. Nor was the preface at all encouraging. The author blandly informs us that the age of the *Rigveda* cannot be less than 4,000 years before Christ and that the express records of the early Hindu antiquity point back to 6,000 before Christ. Having in mind the boundless fancy of the Hindu through the ages and his particularly fatal facility for "taking his mouthful' when it comes to a question of numbers, I proposed to myself to continue to turn the leaves of the book with the amused smile of orthodoxy befitting the occasion. But soon the amused smile gave way to an uneasy sense that something unusual had happened. I was first impressed with something leonine in the way in which the author controlled the Vedic literature and the occidental works on the same ; my superficial reading was soon replaced by absorbed study, and finally having been prepared to scoff mildly, I confess that the author had convinced me in all the essential points. The book is unquestionably the literary sensation of the year just before us ; history the chronic readjuster shall have her hands uncommonly full to assimilate the results of Tilak's discovery and arrange her paraphernalia in the new perspective."

It would have been well if Mr. Tilak had immediately followed the same line and tackled the many questions which he had left unsolved in his book on Orion ; but the profession he had chosen, namely, that of a law-lecturer and a journalist, would not allow him to concentrate his attention on questions of philology and chronology.

Mr. Tilak's activity in contemporary politics was not, however, left in abeyance. He had long ceased to be the Secretary of the Deccan Standing Committee of the National Congress. But as Secretary of the Bombay Provincial Conference he

organized its first five sessions, the fifth of which, held at Poona in 1892, under the presidency of Hon. Mr. P. M. Mehta, was a splendid success. The next year with its deplorable riots between Hindus and Mahomedans and the many new questions suggested by them, brought about a great change in our political atmosphere, and Mr. Tilak was again to the front. Never before did he place himself in so direct antagonism with the apparent policy of some Anglo-Indian officials and never before did those officials realize so well his influence over the masses. Mr. Tilak's attitude with respect to this riot question, whether right or wrong, was clear and unmistakable. He attributed those manifestations of racial prejudice mainly to the secret instigation of some short-sighted Anglo-Indian officers. The policy of Divide and Rule, initiated by Lord Dufferin, was, according to him, at the bottom of all the mischief, and the only effective way, he contended, to check these riots was for Government officials to observe strict neutrality between Hindus and Mahomedans. He made, in fact, a direct charge against a certain class of officials and they naturally resented it. Both Lord Harris the Governor, and his Secretary, Mr. Lee-Warner, were anything but favourably disposed towards him; but Mr. Tilak was not a man to be cowed down by official frowns. Through his paper the *Kesari* he exercised an immense influence over the masses, and it is this influence that is mainly responsible for the infusion of a new spirit among the people.

This spirit has hitherto manifested itself chiefly in a return towards a veneration of indigenous institutions. The most noticeable instances of this are the revival of old religious worship in the form of Ganpati melas and the Shivaji commemoration fund; and Mr. Tilak's name has come to be indissolubly connected with both these movements. Mr. Tilak firmly believes that a healthy veneration of the old gods and the national heroes would best infuse a true spirit of nationality and patriotism. The run for spurious imitations of foreign ideas and customs and the consequent spirit of irreligiousness among the younger generations were exerting a disastrous influence upon the moral character of the Indian youth; and if things were allowed to drift in this way, the ultimate result, Mr. Tilak believes, would be a moral bankruptcy from which no nation can ever hope to rise. It was a very grave problem, and even the Government of India had turned their attention to it at that time. The official panacea, however, was the teaching of moral text-books in Indian schools, which Mr. Tilak in several articles in the *Mahratta* severely criticized. Mr. Tilak thought that to make Indian youths more self-reliant and more energetic, they must be taught greater self-respect, and that can only be done by making them respect their religion and their forefathers. Self-debasement is a good thing in an ascetic or a philosopher, but it does mischief in practical life. Superfluous patriotism may sometimes lead to excesses, but it will also do some good; while self-denying abjectness will only lead to lethargy and death. This is, in brief, Mr. Tilak's social and political philosophy; and however opinions may vary as to its correctness, nobody can deny that he has followed it consistently. Mr. Tilak has often been accused of hypocrisy and inconsistency in matters of social reform. He is a practical reformer in his own way. He educated his daughter, postponed her marriage till the utmost limit sanctioned by the Shastras, advocates relaxation of caste restrictions, and generally sympathizes with the

social reform movement ; and yet he attacks the social reform party. Superficial observers are staggered at this strange incongruity of behaviour, while his opponents attribute it to a desire to gain cheap popularity. The fact is his conduct in this matter is entirely the result of his strong convictions. He desires social reform, but does not believe in the men or the methods that are now employed in carrying it out. The so-called social reformers of the present generation are not the men who possess the aptitude or the moral qualities requisite for a successful reform movement. Hence his criticisms are generally directed to the men and not to the object aimed at. This is the real key to Mr. Tilak's attitude as regards social reform. His principle of criticism is in fact the same with respect to political as well as social questions. He may approve of a Government measure and yet criticise the conduct of officials who carry it out ; similarly he may desire a particular reform and yet strongly condemn those who want to pose as its ministers.

In 1895 Mr. Tilak came to be associated with the Shivaji Commemoration movement. A stray article of his in the *Kesari* of 23rd April 1895 gave such an impetus to the public desire to subscribe for the repair of Shivaji's tomb at Raigad fort in the Kolaba district that Rs. 20,000 were in a short time collected, mostly from small contributions. Festivals also began to be celebrated at many places since that time on Shivaji's birthday or coronation day. A grand festival was held at Raigad in 1896 ; but it had to be abandoned this year owing to the prevalence of the plague. When it was resolved to hold the eleventh National Congress in Poona in the Christmas of 1895, Mr. Tilak was, by the united voice of all parties in Poona, chosen its Secretary, and had, as such, to do almost the whole work of organization in the beginning. He worked till September, when differences as to whether the Social Conference was to be held in the Congress pandal led to bitter party quarrels and compelled Mr. Tilak to retire from the work. He did not, however, cease to take interest in the Congress, but on the contrary did much from outside to make it the great success it was.

The year 1896 saw one of the severest types of famine in this Presidency, and Mr. Tilak was again to the front. He urged upon the Bombay Government to carry out the provisions of the Famine Code and made various suggestions which, if adopted, would have considerably alleviated the sufferings of the people. In Poona he succeeded in preventing grain riots by opening cheap grain shops just in time. When he heard of the distress of the weavers in Sholapur and Nagar he went on the spot, and, in consultation with the local leaders, framed a scheme by which local committees were to co-operate with Government to provide suitable relief to that class. The scheme was similar to the one adopted by the Lieutenant-Governor of the North-Western Provinces. Unfortunately, owing to the unsympathetic attitude of the Bombay Government on this question, the scheme was not accepted, and what is more, the Bombay Government got the provision sanctioning such schemes amended. The wrath of Government was apparently caused by the persistent agitation of the Poona Sarvajanik Sabha, of which Mr. Tilak was supposed to be the leading spirit, to acquaint the people with the concessons allowed to them by law during famine times, and to inform the Government of the real wants of the people. This agitation was, of course, not much to the taste of some officials who had more regard for their own comfort and

ease than to the lives or the happiness of the poor people. The Sabha sent several memorials to Government and received curt or no replies, and ultimately it came to be proscribed altogether. All this of course was indirectly meant for Mr. Tilak, who fearlessly pursued his own way.

Mr. Tilak's latest service to his countrymen is the part he played in the campaign against the plague. As soon as the plague appeared in Poona he started the Hindu plague hospital and worked for days together to collect the necessary funds. While most of the so-called leaders in Poona had run away, he remained at his post, moved among the people, accompanied the search parties as a volunteer, managed the hospital, established a free kitchen in the segregation camp, and was often in communication with Mr. Rand and His Excellency the Governor on the hardships suffered by the populace. In his papers he strongly supported the various measures adopted by Government for the suppression of the plague, but advised their being carried out in a humane and conciliatory spirit. He advised the people not to make useless resistance, and took the Poona leaders to task for flying away at a time of distress. Even Mr. Justice Strachey, while passing sentence, acknowledged his services to Government in this matter.

Mr. Tilak's private life is a model of simplicity. In all seasons and on all occasions he wears nothing but the ordinary simple dress of an orthodox Brahmin. He is singulary free from the vices that are so common amongst some of the educated Indians, and even his bitterest enemies cannot point to anything that may savour as a blot on the purity of his character. To the young and the old, the rich and the poor, the high and the low, he is the same genial, frank and sympathetic friend. His reserved manners and retiring disposition often led people who have never come into close contact with him to misunderstand him, but nothing could be more incorrect than the ideas formed about him by such people. Mr. Tilak has perhaps been the greatest victim of misrepresentation and backbiting, but the fact that he has never taken steps to counteract them is the best proof that 'self' was always the last consideration with him. To do one's duty was his motto, and he never swerved from it by whatever was said about him personally in public or private. He resigned the membership of the Deccan Educatiou Society in disgust, but never afterwards did he write or do anything that might have harmed the College or the School, which he had laboured for several years to rear up. In private life as in public he is always ready to help men in difficulties. When several Mamlatdars brought themselves into trouble in connection with the notorious Crawford case, they appealed to him, and he fought for them until Lord Reay's Government was nduced to give them some compensation for loss of service. Mr. Tilak got nothing for his labour except perhaps the displeasure of those officials who were determined to ruin the Mamlatdars. When again Mr. W. S. Bapat of Baroda was charged with bribery and had no friend to support him, Mr. Tilak worked for him, got him acquitted, and thereby saved the Baroda State itself from a secret danger. And yet Mr. Tilak got nothing for his labours. Many instances might be quoted where Mr. Tilak's timely help has saved many and yet brought not a pie to his pocket. In fact, his very disinterestedness in such matters was often used by his enemies as a handle to attribute sinister motives to him. His very faults, of which he, as a human being, has many, arise from an

excess of good qualities. He is rather over-excitable, too confiding, and perhaps too generous for the kind of the world we live in. In short, he is a typical Maratha, impulsive, bold and patriotic, always intent on high ideals and showing a corresponding disregard for the smaller evils of life.

Such is the man who has been tried for preaching sedition against Government and found guilty by a majority of a jury mainly composed of Europeans. The man, whose whole life has been spent in the service of his countrymen and yet who did not hesitate to incur unpopularity at a time when people were goaded to desperation, is now sent to jail because the Bombay Government have taken it into their head that a gigantic conspiracy of Brahmins exists in Poona. Where that conspiracy is to be found outside the imagination of some Government officials nobody knows, but Mr. Tilak is all the same made a victim of a deep-rooted prejudice. The Judge, while passing sentence, mentioned the good service he rendered to Government, but forgot altogether to consider how that service was compatible with a seditious intention. Mr. Tilak, however, though legally convicted, has been morally acquitted, and has risen ten times higher in public estimation by the bold stand he took during the trial. It was an ennobling sight when, standing at the bar, he reiterated his innocence in spite of the verdict of the jury. A pure conscience and a fixed resolution seemed to endow the man at the time with iron nerves, and the people at once recognized in him a hero standing in defence of a national cause.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

FOURTH CRIMINAL SESSIONS.

8th September 1897.

IMPERATRIX ... ... *Complainant*

versus

BAL GANGADHUR TILAK AND ANOTHER... ... ... *Accused.*

The Advocate-General with Messrs. Macpherson and Strangmann, instructed by Mr. Nicholson, Public Prosecutor ... } For the Crown.

Mr. Pugh with Mr. Davur, instructed by Messrs. Bhaishanker and Kanga, Solicitors ... ... } For the defence of first accused.

The Clerk of the Crown called upon the first accused Bal Gangadhur Tilak and the second accused Keshav Mahadev Bal to surrender to the bail and the prisoners went into the dock.

The Clerk of the Crown next read over the charge to the prisoners under section 124 A as follows:—

You, Bal Gangadhur Tilak and Keshav Mahadev Bal are charged as follows:—

Firstly.—That you, Bal Gangadhur Tilak, heretofore to wit on or about the 15th day of June 1897 at Bombay, then and there being the Proprietor and Publisher of a certain vernacular newspaper entitled the *Kesari* by words intended to be read excited feelings of disaffection to the Government established by Law in British India, to wit, by publishing in Bombay, in the issue of the said newspaper the *Kesari* of the 15th day of June 1897, certain articles appearing in the said issue on page 2 under the heading or title, "Shivaji's Utterances," and on page 3 of the said issue certain paragraphs beginning with the second paragraph commencing in the first column and ending at the end of the first paragraph commencing in the third column and thereby committed an offence punishable under section 124 A of the Indian Penal Code.

Secondly.—That you, Bal Gangadhur Tilak, heretofore to wit on the day and year aforesaid at Bombay aforesaid, then and there being the Proprietor and Publisher of the said newspaper entitled the *Kesari* as aforesaid by words intended to be read attempted to excite feelings of disaffection to the Government established by Law in British India, to wit, by publishing in Bombay, in the said issue of the *Kesari*, the aforesaid articles and thereby committed an offence punishable under section 124 A of the Indian Penal Code.

Thirdly.—That you, Keshav Mahadev Bal, heretofore to wit on the day and year aforesaid at Bombay aforesaid, then and there being and acting as the Printer of the said newspaper entitled the *Kesari* by words intended to be read excited feelings of disaffection to the Government established by Law in British India, to wit, by printing for publication in Bombay aforesaid in the said issue of the said newspaper the aforesaid articles and thereby committed an offence punishable under section 124 A of the Indian Penal Code.

Fourthly.—That you, Keshav Mahadev Bal, heretofore to wit on the day and year aforesaid at Bombay aforesaid, then and there being and acting as the Printer of the said newspaper entitled the *Kesari* as aforesaid by words intended to be read attempted to excite feelings of disaffection to the Government established by Law in British India, to wit, by printing for publication in the said issue of the said newspaper the aforesaid articles and thereby committed an offence punishable under section 124 A of the Indian Penal Code.

The Special Jurors were then called.

Special Jurors challenged by the Crown:—Messrs. Eknath R. Khote, Hormasji E. Bomanjee, Govardhandas Gokuldas Tejpal, Jehangir Jijeebhoy Lám, Veerchand Deepchand, Dwarkadas Dharamsee, Jagmohondas Vandravandas Bhaisett and J. F. N. Graham.

Challenged by the Defence.

Messrs. Esmalji Ebrahim Karwa, James Stewart, Cowasji Dadabhoy Dubash, W. F. O. Donoghue, H. Holmes, W. F. A. Faulkes, D. MacL. Slater and R. G. C. Westbrook.

The following gentlemen were eventually empannelled to serve upon the Special Jury :—

Foreman—Mr. H. I. P. Thompson.

Mr. J. S. Sassoon.
Mr. J. Porter.
Mr. H. M. Phipson.
Mr. Anandrao N. Vasudev.
Mr. R. Woolcombe.
Mr. Babaji Cassinath.
Mr. Pestonji N. Wadia.
Mr. H. F. Proctor.

His Lordship : Who appears to prosecute ? The Advocate-General : I do, my Lord, with Messrs. Macpherson and Strangman. Mr. Pugh : I appear for the Defence, my Lord, with Mr. Davur, for the 1st accused.

His Lordship : Does any one appear for the second accused ? The Advocate-General : I think not, my Lord.

OPENING SPEECH FOR THE PROSECUTION.

The Advocate-General said :—May it please your Lordship and gentlemen of the Jury,—I am sure, gentlemen of the jury, that you will endeavour in dealing with this case, to exclude, so far as you possibly can, from your minds anything that you may have read about it in the papers, or heard in conversation, and deliver your verdict entirely upon what is given in evidence in the case before you. Gentlemen, the case is one of considerable importance. The first accused is the proprietor, editor, and publisher of a Marathi paper published in Poona and called the *Kesari*, and the second accused is the printer of that paper. They are charged under section 124 A of the Indian Penal Code with publishing certain articles or writing in that paper which, the prosecution allege, come within that section. Before I give you the articles upon which the prosecution is based, I would first call your attention to the provisions of section 124 A. The section

runs as follows : "Whoever by words either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India shall be punished with transportation for life, or for any term to which fine may be added or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine." Then, there is the following explanation annexed to this section. "Such disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection."

His Lordship : I think, Mr. Lang, that there is another sentence.

The Advocate-General: Yes, My Lord (*reads*) "Therefore the making of comments on the measures of Government with the intention of exciting only this species of disapprobation is not an offence within this clause."

Now, the first part of the section says : "Whoever by words, &c." The word used is disaffection, and the meaning of the word "disaffection," as you will find in any dictionary of the English language is, "dislike" or "ill-will." That is the definition given in Johnson's Dictionary. In Webster's dictionary the definition is "dislike, disgust, unfriendliness, ill-will, alienation, disloyalty, hostility." And the same explanation is given in almost all the other dictionaries. Therefore, in considering the articles which I will read to you the question you have to determine is whether they are calculated to excite or were intended to excite feelings of disaffection, that is, ill-will, unfriendliness, hostility towards the Government established by law in British India, which is the British Government. Now, this section has been once before the Court in Calcutta in a case, which has been reported in the I. L. R. 19 Cal., p. 35 ; I will read to you an extract from the charge of Sir Comer Petheram, the Chief Justice of Bengal, to explain what is the true meaning of the section ; and, of course, I do this subject to what his Lordship will say in summing up this case to you.

Now, I will read what was said by the Chief Justice on page 44, after he had read the section :—"Mr. Jackson (the counsel for the prisoners) contended that the words "Disaffection" and "Disapprobation" were synonymous words and had one and the same meaning. If that reasoning were sound, it would be impossible for any person to be convicted under the section, as every class of writing would be within the explanation. But you, gentlemen of the Jury, are thoroughly acquainted with the English language and must know that there is a very wide difference between the meaning of the two words, disaffection and disapprobation. Whenever the prefix "dis" is added to a word, the word formed conveys an idea the opposite to that conveyed by the word without the prefix. Disaffection means a feeling contrary to affection ; in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action, and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. If a person uses either spoken or written words, calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or

resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling. The second question for you, gentlemen of the Jury, then will be whether upon the evidence before you, you think that the articles circulated by the prisoners were calculated to create suche feelings in the minds of their readers, and if so, whether they intended to creat such feelings by their circulation."

If a person publishes words, either written or spoken, which are calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of Government, or to subvert, or resist that authority when occasion may arise ; and if he does it with the intention of creating such a disposition on the hearers, he will be guilty of the charge of exciting disaffection within the meaning of this section, even though no disturbance or feelings of disaffection were produced. Gentlemen, that is the law which guides this Court, that is the law in British India, and I need not trouble you, and I do not propose to trouble you, by any reference to the rulings of English judges, or the dicta of any of the English judges on that subject. We have in India this section 124 A, I. P. C., and we have the meaning of that section as given by the Chief Justice of Bengal which, I submit, subject to his Lordship's ruling, is the clear and proper meaning of that section. That being the law which has to be applied in this case, I will now tell you what the articles are which form the subject of the present charge. They are two articles which appeared in the *Kesari* of the 15th of June 1897 ; one is headed "Shivaji's Utterances," and the other purports to give an account of what took place on the occasion of the celebration of Shri Shivaji's coronation. It is hardly necessary for me to dwell at any length, in reminding you who Shivaji was. No doubt you all have read of him. I will only remind you for the purposes of this case that Shivaji lived in the 17th century. He was born in 1624 A.D.[1], and was the son of a considerably important Maratha chieftain. He succeeded in freeing from Mahomedan rule a very large part of the Deccan and Konkan. He succeeded entirely in overthrowing the Mahomedan rule in the country, and establishing *Swarajya*. Of late years there has been a movement in the Deccan to celebrate the birthday of Shivaji and also celebrate the day on which he assumed sovereignty. His birthday was in May 1627. That would, I think, corresponds with the Marathi month of Jeshta,[2] and he was enthroned in 1664, on the 13th of Jeshta Shudha (6th June 1664—K.G.D.). I say that, of late years, opportunity has been taken to celebrate the birthday of Shivaji and also the date on which he assumed sovereignty. Now, I do not for a moment say that there is anything in the slightest degree necessarily illegal in the desire of persons to celebrate these two anniversaries, for I can quite understand that the people of the country must be

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[1] This is a mistake. Shivaji was born in 1627.—K. G. D.

[2] Shivaji was born on the 2nd Vaishakh Shudh—English month of May 1627.—K.G.D.

proud of a man who was a great genius, who had great courage, and who succeeded in overthrowing the Mahomedan rule. I do not say there is anything necessarily disloyal in persons living under British rule and celebrating this anniversary; but I think you will find when I come to deal with the articles, which have appeared in the *Kesari*, including the articles which are the subject of this charge, that certain persons, including the prisoners, have taken advantage of these celebrations to use language in reference to the British Government, which can only be intended to excite disaffection towards it among their countrymen and to seek to overthrow the present Government. They have, moreover, been endeavouring to incite their countrymen as far as possible to imitate the example of Shivaji and subvert and overthrow the Government. In these celebrations of Shivaji, they have endeavoured to take advantage and compare the state of the country as it was in Shivaji's time with what it is now, and to impress upon their countrymen how justifiable it would be for them to overthrow the Government, as it is at present established. Gentlemen, there can be no doubt, as will appear from the article in the *Kesari*, which I shall read to you, that it was the object of the persons who were engaged in these celebrations of the anniversary of the birth of Shivaji. The article to which I refer is an article which appeared in the *Kesari* of 4th May. And with his Lordship's consent I will hand the jury copies of the official translation which I will read. They are very long and it would be absolutely impossible for you, gentlemen of the jury, to carry these articles in your minds, or understand them, unless you have them before you.

His Lordship: Which articles are you referring to, now?

The Advocate-General: It is an article which appeared in the *Kesari*, of the 4th May, one which you have not seen, my Lord.

His Lordship: Not the incriminating articles?

The Advocate-General: No, my Lord, I will come to those afterwards.

His Lordship: This is an article of an earlier date than the articles complained of.

The Advocate-General: Yes, my Lord, an earlier date. This is an official translation of an article on the object of the Shivaji celebrations, and is dated the 4th of May 1897.

The Advocate-General then reads the article. (*See Exhibit* **K**.)

The Advocate-General was proceeding to show that from the tone of the letter it was perfectly clear that the object of the celebration of the anniversary of the birthday of Shivaji was to induce the people who read those articles to become like Shivaji, and, like Shivaji, free themselves from those who were at the present time oppressing them.

Mr. Pugh: I object to that article being put before the Jury, and I would have objected earlier, had I known what the Advocate-General was reading. No notice was given to us of this article till late last night; I had not seen it till my learned friend read it, and I object to its being put in. This is not an article at all. It is signed "Your most obedient servant, Ganesh." This is a letter written to the paper. It is not an article written for the paper, and one cannot, in order to prove the animus of the editor, put in a particular letter sent to him in the course of

correspondence. It is particularly obvious that in the matter of correspondence of a newspaper, that, looking at it from a commercial point of view, a paper is valueless, unless you have writers on both sides of the question in order to make the paper interesting. I do not say that one might not indict a letter sent to a paper supposing it contained grounds for indictment. I am not saying that you cannot try a man for libel contained in a letter sent through a paper, but I do object to a stray letter like that of "Ganesh," which, no doubt, was received in the course of correspondence and so introduced into the paper, being put in to show animus on the part of the editor. I contend that a stray letter cannot be so taken as showing that the editor is liable. I would also ask your Lordship for a ruling in this matter as we have had no notice of it. (Here Mr. Pugh was informed by his Solicitor that notice was received late at night.) I am now given to understand that notice of this and other letters which the prosecution intend to put in was received late last night, and I ask your Lordship to give a ruling on the point.

His Lordship to Mr. Pugh: I think the time for taking this objection is rather premature. I think the letter may be read, and you can renew this objection when it is proposed to put it in evidence.

His Lordship to the Jury: I ask you, gentlemen of the Jury, to put it entirely out of your mind for the present, as it is yet to be considered as to whether it is part of the matter for your consideration in this case.

Mr. Pugh: I would ask my learned friend not to read any more letters of this kind.

His Lordship: I am sure the Advocate-General will not touch upon anything to which you may intimate there will be objection.

Mr. Pugh: I am certain he will not do so.

The Advocate-General: The next article forms a part of the charge, and in regard to that I will ask you, gentlemen of the Jury, to give your most careful consideration.

Mr. Pugh: Your Lordship, may I ask that the first accused may sit behind me to give his instructions.

His Lordship: Certainly.

[Mr. Tilak then left the dock and took his seat immediately behind his solicitors.]

The Advocate-General: This is the first of the articles which charges are based upon.

The Advocate-General then proceeded to read the article. ("*Shivaji's Utterances*," see *Exhibit* D.)

Coming to the passage "Foreigners are dragging Laxmi violently by the hand," the Advocate-General said: Laxmi, I will point out, is the goddess of wealth and the meaning of the reference is—I submit it can have no other meaning—that the British Government are foreigners and that they are dragging out the wealth out of the country. (Reads.) "By persecution." Persecution is the word used in the translation, but in the original there is the word *zulum*.

His Lordship: What is the word for foreigners?

The Advocate-General: My Lord, the word is *parastha.*

His Lordship: Is "foreigners" the literal translation for that?

The Advocate-General: I do not think, your Lordship, there can be any doubt about that.

The Advocate-General continuing, referred to the following passage: "Say ye, where are those splendid Mavlas, my second lives, who promptly shed their blood on the spot where my perspiration fell." I can best explain this by a reference to Grant Duff's history of the Mahrattas, where at page 164 it is stated that the Mavlas was the name of Shivaji's Infantry; and the passage described the great prowess of the infantry. (The Advocate-General then read the passage in Grant Duff's History of the Mahrattas.[1]) The next sentence I would call your attention to is "O, people, how do you tolerate in the Kshetra the incarceration of those good preceptors; those religious teachers of mine, the Brahmins, &c." Kshetra means a sacred place. This is an allusion to the imprisonment of certain Brahmins of Wai in 1894, who disregarded and disobeyed the orders of the Collector of Satara not to play music in front of a Mahomedan mosque. Gentlemen of the Jury, you will find an allusion to this in several other articles which will be put before you, and the imprisonment of these Brahmins who disobeyed the law at Wai is one of the principal causes of complaint in this article. We now come to the sentence: "The cow, the foster mother of babes when their mother leaves them behind, the mainstay of the agriculturists, the imparter of strength to many people, which I worshipped as my mother and protected more than my life, is taken daily to the slaughter-house and ruthlessly slaughtered there." This was clear upon the face of it and referred to the slaughter of kine. Then, we come to the words: "He himself came running exactly within the line of fire of my gun. I thought him to be a bear." Now the reference to this, which I think we shall be able to prove by extracts from their own paper, is this: A young forest officer, named Fagan, was out shooting one day, when by misadventure he shot a woman, who was one of the beaters, and who at the time was crouching on the ground. He mistook her for a bear, and the unfortunate woman was killed. That incident is referred to in an article of the *Kesari* of the 14th June 1892; and that explains the meaning of the reference. I will read it to you. (Reads Exhibit H.) Then there is another sentence: "Their spleens are daily enlarged." I think the Jury will understand this allusion pretty clearly. Occasionally there have been cases where natives have been struck by Europeans with blows, which were never intended to cause death, and which, under ordinary circumstances, would never have proved fatal; but owing, probably, to the weak state of health of the persons struck, these persons have fallen

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[1] The foundation of his (Shivaji's) power was his infantry . . . . It was raised in the Ghaut Matha and Concan; those of the former tract were called Mawulees, those of the latter Hetkurees. These men brought their own arms, and were only furnished with ammunition by Government . . . . . The Hetkurees excelled as marksmen; but they would seldom be brought to desperate attacks, sword in hand, for which the Mawulees of Shivaji became celebrated. Both of them possessed an extraordinary facility of climbing, and could mount a precipice or scale a rock with ease, where men of other countries must have run great risk of being dashed to pieces. (*Extract from Grant Duff's History of the Mahrattas.*)—K. G. D.

down and ruptured or enlarged their spleens and death has ensued. And we are asked: "How do these white men escape urging these meaningless pleas?" The next passage which calls for remark is the one beginning, "He is mad; lift him up and send him at once upon a pilgrimage. He is fond of pleasure. Deprive him of his powers, saying that it will be for a time only." This alludes to the fact, which is well known, that occasionally in consequence of misgovernment in the Native States, the Government of India have had to withdraw powers from the rulers there. This passage, I believe, had particular reference to the Maharaja of Kolahpur, who in 1882 went out of his mind, and practically had to be kept in confinement, and who afterwards died.

The Advocate-General then read to the end of the article and remarked: Now, gentlemen, I have read to you the whole article and I have explained to what the allusions refer. First of all, you see that Shivaji is supposed to have awakened from his sleep and to be viewing the present state of the country. What does he find, according to that article? First of all, he finds that the wealth of the country is taken away by the *zulum* or oppression of the foreigners; that is, the English. Secondly, that holy men, that is to say, Brahmins, are being unjustly punished; that kine are not protected; that whenever a native is concerned with a European in a Court of Justice, justice is not done to the former; and that Englishmen escape punishment by urging meaningless pleas; that under British rule women are insulted in railway carriages, which was not done in the time of Shivaji; and, further, that whenever any chance occurred, on excuses which are not well-founded, ruling princes are deprived of their powers. Gentlemen, can you have any doubt in your mind that the object and the intent of publishing that article which appeared in the *Kesari* was for the purpose of exciting feelings of disaffection, on the part of those who read it, towards the British Government, the Government established by law in British India? It is addressed in Marathi to Hindus; and, gentlemen, can you have the slightest doubt that the effect of that article on the minds of those who read it would be extremely likely to excite disaffection, dislike, disloyalty, hatred and disgust towards the Government? I do not think you will consider that the sting is taken out of the article merely because of the paragraph he puts at the end: "Have you not thus been laid under deep obligations? Make then your subjects, who are my own children, happy. It will be good for your reputation if you show your gratitude now by discharging this debt of obligation." This article is signed "Mark of the Bhawani's Sword." That is, Shivaji's sword, which is now at Satara, and is kept there. Bhawani, as I dare say you know, the goddess after whom the sword was named, is the goddess of destruction. The next article which is the subject of this charge immediately follows, and, of course, you will take it in connection with the one I have just read. They both appeared in the same paper. Both are placed before the readers of the paper in the same issue. One article holds up the present rulers to the hatred of the persons who read these articles. The other, as you will presently learn, distinctly advocates political assassination, a fact about which there can be no doubt whatever.

I will now read to you the second article. (*Exhibit* C.) Having read the article up to the reference to the story of Rajasuya Yajna in the Mahabharata, the Advocate-General said: I do not propose to read

from the Mahabharata, the long epic of which I have a translation, but I will give you a mere outline of that incident. According to the article in question, Professor Paranjpe read the Purana and he had for the text of his discourse portion of the Mahabharata which depicted the exasperation of the ambitious Suyodhana at the sight of the Rajusaya sacrifice (a sacrifice performed by a universal monarch attended by his tributary princes) performed by Dharmaraja, the first thoughts in that connection which came into his mind and the conversation he had with Shakunimama and Dhritarashtra. The Puran reader, with a view to give his audience a clear idea of the Rajasuya sacrifice, compared it with the Diamond Jubilee and commenced the Purana reading after having observed, by way of an exordium, that it was not an attempt to do what Duryodhana did but only to lay before them the differentiating principles mentioned in the Mahabharata as to the potency and quality of ambition which inspired all beings and the ultimate power it had of elevating a country or a party. I submit that there can be very little doubt as to the meaning of the above incident. Under the pretence and guise of a dissertation in the Mahabharata you find the speaker suggesting to his hearers that "discontent is the root of prosperity, but contentment destroys prosperity"; and further suggesting how death was preferable to being trampled upon, and how the absence or want of arms may be made good by craft and guile. (Counsel then went on reading to the end of Prof. Paranjpe's Puran, portion of the same Exhibit) and continued: Before I go any further I must call your attention to what English historians say about the murder of Afzul Khan. I will read from a book of acknowledged authority on the subject, a book to which Professor Bhanu also referred, namely, Grant Duff's History of the Mahrattas, in which you will find the story told of the death of Afzul Khan.[1] (*See* p.123 of the Indian Reprint.) This shows how Afzul Khan was murdered by Shivaji at Pratapgad, which is a hill fortress in the neighbourhood of Mahableshwar. This is the story told by Grant Duff. I will not read you what Professor Bhanu said. I would beg your careful consideration to this lecture as it is put forward in favour of the prisoner. (*He then reads the report of Prof. Bhanu's speech from Exhibit C in the case.*)

Professor Bhanu said: "We all are striving to regain (our) lost independence and this terrible load is to be uplifted by us all in combination." This can only mean the burden of the English Government. "If any one be pressing down the country from above cut him off"—even by murder. This is the translation of those words, and it is for you to say what the meaning of it is. To my mind the meaning is perfectly clear. If any one is pressing down the country from above or oppressing the country, do as Shivaji did,—cut him off, murder him. The Advocate-General having read to the end of the paragraph, observes. This is the report which the prisoners published in their paper and gave to their readers. You may perhaps ask why it is that Professor Bhanu is not charged with the prisoner. And the answer is obvious. The prosecution has no evidence whatever of what Professor Bhanu really said on that occasion. There were no Government reporters present to take down Professor Bhanu's lecture. No body knows

[1] This version of Afzul Khan's death is well set forth in the Judge's charge to the Jury.—K. G. D.

what he really said and all that Government know is what the prisoner has chosen to put forth in his paper as what Professor Bhanu said at the meeting. If Professor Bhanu had been asked if he had made the statements which were ascribed to him he might have most positively denied ever having made such statements and might perhaps have added that it was all a concoction on the part of the prisoners. Before any attempt could be made to proceed against Professor Bhanu the prosecution would have to prove that the sentiments to which the prisoners gave pubication were the utterances of Professor Bhanu; and this the Government are unable to do. His Lordship will tell you, when summing up, that the prisoners were personally liable as editor and printer for whatever they sent forth to the world as the utterances of Professor Bhanu which were given in the report of the proceedings appearing in their paper. Coming to Mr. Tilak's speech, Counsel commented upon the following: "Did Shivaji commit a sin in killing Afzul Khan or how? The answer to this question can be found in the Mahabharata itself. Shrimat Krishna's advice in the Gita is to kill even our teachers and our kinsmen." This refers to what the god Krishna said. No matter who was in the way, whether he was the friend, preceptor or relation, he should be got rid of. Murder him, if necessary, if only you are doing it for the good of the country. Such were the utterances inculcated at the meeting, and such was the report this paper sent forth to the world. Then we come to the passage "God has not conferred upon the Mlenchhas the grant, inscribed on a copperplate of the kingdom of Hindustan. You will notice that the expression is "God *has* not conferred upon the Mlenchhas a copperplate of the kingdom of Hindustan." The meaning of the word Mlenchhas, which, I believe, comes from the Sanskrit, is the generic term for barbarians or foreigners. A copperplate means a sanad or charter to govern India. The meaning ot the word Mlenchhas is given in all the dictionaries as barbarians or foreigners who are not subject to the usual Hindu institutions. A great number of grants of land were conferred in former days by native chiefs and these grants were inscribed on copperplates, and the meaning of the reference to copperplates is, I submit, quite clearly intended to refer to the present Government. The present Government are Mlenchhas, not Hindus nor subject to the Hindu institutions, and had not received from God the copperplate or sanad or charter to rule Hindustan. I would call your attention to the explanation which the prisoner gave a week afterwards in a paragraph which appeared in the same paper. (*See Exhibit* **E** *in the case.*) I submit, taking into consideration the whole of the article and the intention and the use of the word used in that article, it is calculated to impress upon the minds of the readers of that article that the British Government had no right to be in India and that they were justified in adopting any means they like, even murder, for the purpose of obtaining that object.

The Advocate-General then read, "The Maharaja strove to drive them away," &c., to the end of the Exhibit **C** and then remarked: Well, gentlemen, these are the two articles which are the subject of the charge; they appeared in the same issue of the paper. The first related to "Shivaji's Utterances": Shivaji is supposed to have returned to this country and sees that it is ruined by the British and is in the hands of the present rulers. It deprecates the present unsatisfactory state of India. I call your special attention to the terms of that article.

We next come to the second article. There is a distinct and unblushing attempt made to justify the committal of a political murder or assassination when the good of the country requires it. I submit that the whole aim and object of the articlea ppears to be to impress upon the person or persons who read the newspapers that they would be perfectly justified in making use of the same means, as were suggested by the prisoner, at the present time. I submit, it is clear from the remark of Professor Bhanu when he said, that "it is perfectly idle to argue whether Shivaji murdered Afzul Khan and as to who struck the first blow." They were told by Professor Bhanu that they were justified in committing the murders of the foreigners who had no right to rule over them. The article in question appeared on the 15th June, and on the night of the 22nd June Lieut. Ayerst and Mr. Rand were murdered at Poona within a week of the appearance of these articles. I do not say that the murder was actually caused by the inuendos of the articles. I have no evidence to lay before you you; can form your own opinions, but I think we are all of opinion that an article of this kind, published at a time when there is a considerable amount of excitement owing to the plague at Poona and also to the famine, and read by those who suffered from the famine and plague operations of the Government,—I submit that an article of this sort is extremely likely to cause men to do an act like that which caused the deaths of Lieut. Ayerst and Mr. Rand. You will, in considering these articles, consider the time at which they were published and also the state of the country for so many months past, when people suffered so much from famine in addition to the plague which was making most fearful ravages in Poona. And Government was striving by the best measures to stamp it out, and these articles evidently caused dissatisfaction among certain people in Poona. The articles call attention to the ruin of the country owing to British rule, and it points out how justified any man would be to save his country from those who were oppressing it. I will now call your attention to an article which the prisoner Tilak published in his paper in the following week, with regard to the several statements in the second article I have read to you. It appears the articles have been read by someone who understands Marathi, and he called attention of the public to what had been said in the article in a letter which appeared in the *Times of India*. On the 22nd of June we have an article in the *Kesari* in reply to "Justice's" letter. (*Reads the article, see Exhibit* **E.**)

This is the explanation which the prisoner attempts to give of the article of 15th June. He says that the word *Mlenchhas* did not relate to the British Government or Europeans, but to the Mahomedans in Shivaji's time. What he really said was that the Mahomedans of Shivaji's time had not a sanad to rule India. That was the very point to which the writer "Justice" had called attention in the newspaper. But it must be remembered that this was done after the letter by "Justice" had appeared in the columns of the *Times of India*. I submit that it would be extremely difficult for you to accept that explanation. In considering these articles, you will, of course, take into consideration, as I have said before, the time when the articles were published. It might perhaps be stated that no articles like these would in any way affect the British rule which was so firmly established, and that there was no chance of articles like these creating disaffection in the country. But that is no answer to the charge at all. In fact, if you are of opinion that these articles are calculated to excite disaffection it is no answer to the

charge to say that it is not likely that the disaffection caused thereby can be of a very serious nature, or that it would be productive of very serious consequences. But I would submit to you that you must take into consideration the fact that it is quite possible that at any time a European war breaks out, and when all the resources of the British Government are required, it is quite likely that articles of this description, which are calculated to spread disaffection and which are read over a large portion of the country, may prove serious. [*The Advocate-General then read section* 124*A, I. P. C., and the explanation which follows that section.*] It seems to me that it can be successfully contended that these articles come within the four corners of the section. Now, take the first article. It is directly against the British Government in India. You will find in that article nothing which comes within the disapprobation of the measures of Government as is compatible with the disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority.

According to this article the country is ruined and there is in it as plain an incitement to resist the authority of Government that may be available, and it is on the whole quite inconsistent with the explanation appended to the section. Before I sit down I will call your attention to certain other articles published in the paper, and also in the *Mahratta* which is a weekly paper published in Poona by the prisoner, in order to show the animus of the prisoner with regard to the British Government and British people, and these articles must be taken into consideration by you in conjunction with the articles which are the subject of the charge. I will not read you all the articles, but only some of them. The first one I will read is an article which appeared in the *Kesari* of the 6th April 1897. (*See Exhibit* J.)

Mr. Pugh: I object to the article being put in, as it is a contribution and is signed by "Dâsânudas." I contend that it is exactly in the same position as a letter.

The Advocate-General: It is a contribution which the prisoners sent forth to the world in their paper.

His Lordship: As this is an objection which may apply to other articles, I think I better hear you now, Mr. Pugh.

Mr. Pugh: What I wish to say, my Lord, is what I have already indicated. I do not contend that where a letter is put in a paper the editor could not be indicted for libel in having published it, supposing libel was contained in it. I do not contend that they could not indict any letter, supposing that a letter published in a paper could be shown to be an offence intended or coming under section 124A. But where the accused are charged in respect of two articles unde rsection 124A of exciting disaffection under the section, well then, what I submit is that you cannot, for the purpose of showing animus, produce other letters or contributions from other persons purporting to be contributions on the face of it. Such contributions cannot be produced to show animus of the paper, and for this reason, that in the case of correspondence in a newspaper, if it is to be worth anything from a commercial point of view, they must have opinions other than those of the editor. One-sided correspondence would not be of interest to the public, and we know very well that in nearly all newspapers letters are published by the editor on one side

and on the other. It might be that the editor favored one side. It might be that he favored the other. But I submit that if the prosecution are entitled to put in the articles properly so called from a paper to show his animus, they cannot single out various contributions made to the paper by different persons and say that inasmuch as the opinions are expressed in the paper therefore they were entitled to put them in for the purpose of showing the editor's animus.

His Lordship: Your objection is applicable to any contribution which purports to be by some outside authority such as a letter from a correspondent or a paragraph contributed by some outsider. Your objection would apply to everything of that description?

Mr. Pugh: Everything of that description. I contend that you cannot take it for the purpose of proving animus.

His Lordship: Because you say it is wrong to assume that the proprietor and the editor necessarily agree with what they print in the newspaper from correspondents.

Mr. Pugh: That was my contention, and I will show your Lordship that the *Times of India* in its correspondence inserted not only the letters of "Justice" but letters on the other side, and it would be monstrous to say in regard to the *Times of India* that animus was shown by what was contributed by one side or the other. A letter appeared in the *Times of India* with regard to the coronation of Shivaji, but it could not be taken to show what the animus of the paper was. It has always been recognised that letters and editorial articles are quite different in character. Letters are supposed to be written by somebody outside the paper, and they are in no way identified with the paper in expressing its opinion.

The Advocate-General: I submit that all the contributions to the paper accepted by the prisoner and sent forth by him to the world are evidence for showing the animus with which the paper had acted. This particular article is not a letter to begin with. It is a contribution, apparently a long contribution, consisting of six paragraphs and signed with what is evidently a *nom-de-plume* "Dâsânudas," meaning slave of the slaves. This was a contribution accepted by the proprietor and published in a paper, and I submit, my Lord, that it does not make the slightest difference whether the names of the defendant or the name of the *nom-de-plume*, as in the present case, are attached to these documents. They were published by the defendant and sent forth to the world by him, and they are documents which can be put in evidence against him. But here we find in these papers from time to time that these articles or letters of contributions are inserted all of which have the same tendency and all of which contained a certain amount of abuse of the British Government and British people.

His Lordship: I need not trouble you any further, Mr. Advocate-General. It has always been held in trials for libel, whether seditious or not, that extracts from the same paper of either an earlier or later date might be put in to show the animus with which the article is published. It is perfectly true that the editor is not always to be taken as endorsing the letters inserted, and it will be open to Mr. Pugh to put in letters or articles of an opposite sense to show that these articles did not represent the views of the editor and publisher. *Prima*

facie the accused inserted that article and disseminated it, and *prima facie* he is responsible for so doing. He showed his animus; and, in my opinion, it comes within the authorities to which we have to refer.

The Advocate-General: I will now read to you the article in the *Kesari* of 6th April headed "Test of serving the Cause of the Public," signed by "Dasanudas" (*see Exhibit* **J** *in the case*). There is also another article in the *Kesari* of 4th May on the subject of plague operations. (*See Exhibit* **L** *in the case*). *Reads* the article of 4th May.

The next article I will read to you appeared in the *Mahratta* on the 23rd of May and is headed "Free Thoughts." (*See Exhibit* **M** *in the case*).

The next article is also in the same paper, which is published once a week and is written in English, dated 30th May, headed "Free Thoughts." (*See Exhibit* **N**). It alludes to the fact that a considerable number of the legal profession, judges, barristers, &c., had left Bombay owing to panic on account of plague. I would just like to remark that the real cause of their departure was a long vacation, which is always availed of for a trip home. The next article appears in the same paper on the 30th May and is headed "An Arms Act for the Baroda State." (*See Exhibit* **O**). Coming to the italics in the article which runs as follows: "and the subjects, in trying to get emancipation, will, *if constitutional methods fail*, have some day to resort to arms," the Advocate-General said that they were in the original. (*Reads Exhibit* **M**.)

We next come to the article headed "Indian Princes in London." It is also dated 30th May and appeared on page 5 of the same issue. (*See Exhibit* **P**). These are all the articles in these papers to which I will allude. I contend they draw unfavourable comparisons between the condition of the Mahrattas of the present time and Shivaji's day and are meant to excite people against British rule. I submit that these articles would be useful to you in showing the animus of the prisoners against the British Government. Even those native princes who went to England to attend the Jubilee are held up to ridicule in this paper. You will remember the remarks made with regard to the officers of Government connected with plague regulations and to my mind there can be no doubt that this paper was actuated by animosity to the British Government to which full expression has been given in the article dealing with the Shivaji celebration. The ruling which his Lordship has just mentioned enables me to call your attention to an article of the 4th of May which appeared in the *Kesari* (*see Exhibit* **K**) which I have already read to you and which you have before you. I would call your special attention once more to the sentence which calls upon all Hindus to unite and ask God to give them a Shivaji similar to this. This shows an application to the present time, and by these celebrations an attempt has been made to excite the people against British rule. Gentlemen, you may ask, perhaps, why were proceedings not taken out against this paper before. The articles were published on the 15th June and the information was laid on the 27th of July. Now, in the first place it takes some time to get these articles translated. The *Kesari* and such other papers are not read by the European officers of the Government but are circulated only among the natives of Bombay, Poona, and elsewhere. Though 7,000 copies are issued weekly, they do not come to, and are not read by, officers of Government. The

articles are required to be translated carefully before it is determined whether any action should be taken in regard to them. And it is perfectly clear that the native readers clearly realise what was the meaning of the articles. The fact that "Justice" referred to the article in question in his letter to the *Times of India* does not in the slightest degree show that it was clearly brought to the notice of Government at the time. It must also be remembered that the prosecution in respect of an article of this sort gives considerable notoriety to the articles which are read far more freely and extensively than otherwise. So long as we have no reason to suppose that not much harm is done by the article it is the opinion of Government that all prosecutions of this kind should be avoided as much as possible. Government have not, with regard to the native press, been guilty of any undue haste. It is only when they discover what the effect of the articles was, that proceedings are taken and the law put into motion. There is another circumstance which will probably be brought to your notice, and it is that Tilak, the prisoner No. 1, is a member of the Legislative Council. I do not know exactly when his nomination to the seat in Council was sanctioned by Government. It was about the 24th of June his nomination was accepted by H. E. the Governor after the appearance of the articles in the paper. That really has nothing whatever to do with the case. I presume that it will be argued that the Governor would not have accepted his nomination if the articles which appeared on the 15th June were such as were calculated to excite disaffection among the people. These articles were written in the Mahratti language and they have not been officially translated as was the case with vernacular articles whose summary only was provided to Government; and there was nothing to show that these articles had been considered by the Governor before his nomination was accepted. The fact that Tilak is a member of the Council ought not in any way to weigh with you. The question for your consideration is whether the articles which the prosecution have submitted and the publication of which will be proved before you, are sufficient to establish an offence under Section 124 A. You will be called upon to hear very little evidence in this case, mostly of a formal character, as we do not intend to place much oral evidence before you, and it will be for you to say whether in the meaning of Section 124 A, I. P. C., these articles are such as are calculated to excite disaffection towards Government as established by law in British India.

First Witness—Mr. Mirza Abbas Ali Baig.

Mr. Mirza Abbas Ali Baig, the first witness called by the Prosecution, was examined by the Advocate-General.

Q. Your name is Mirza Abbas Ali Baig.—*A.* Yes.

Q. You are Oriental Translator to Government.—*A.* I am.

Q. Are these the orders you received from the Government to institute the proceedings (Exhibit **A**)?—*A.* They are.

Mr. Pugh asked to be allowed to see the document. After examining it he said: I object to this going in evidence as the sanction of Government to prosecute in this case.

Section 196 of the Criminal Procedure Code provides for the sanction, and it says no court shall take cognizance of any offence punishable under Chapter VI. of

the Indian Penal Code except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf. This document that has been tendered by the Prosecution purports to be a direction or order to Mr. Mirza Abbas Ali Baig, Oriental Translator to Government, to make a complaint against Mr. Bal Gangadhar Tilak, the publisher and proprietor of a paper called the *Kesari*, and Hari Narayan Gokhale, the printer, in respect of certain articles appearing in the said paper under section 124A and any other section of the Code which may apply. I am informed that the *Kesari* had been published for some seventeen years, and in the authority to proceed in respect of certain articles that had appeared in the *Kesari* no mention is made of any particular time during the course of those seventeen years, and the order could cover the whole period. Then he was to proceed against them under section 124A or any other section which may be applicable to the case. What I submit is, that this is no sanction to proceed in respect of an offence with which the accused is here charged. The first article which formed the subject of the charge was not an article at all; it was a poetic effusion. The second was a report of the Shivaji commemoration meeting. Now, in the first place, these are not articles. In the second place, no date is given. I am told, my Lord—I have not seen any report of it—that by a ruling of this hon'ble Court by Messrs. Justice Parsons and Ranade it has been held that to constitute sufficient sanction the date of the issue of the paper in which the article of complaint appears should be given. Their Lordships have considered that it would be sufficient if the date of the issue of the paper which contained the alleged offence of publishing seditious matter (words which come within section 124A) were given. This is the utmost length to which the decisions have gone at present. If it mentioned a particular paper of a particular date it would be sufficient sanction. If the order said that the persons were to be proceeded against in respect of an article appearing in the issue of the 15th June, if the sanction was to cover any articles of the 15th June, it would be another matter; but now we are going further, and the sanction put in is to prosecute these persons with respect to certain articles which appeared in the *Kesari* without giving any date at all and to proceed under section 124A of the Indian Penal Code or any other section. What I submit is, that this is not at all intended by the section. What is intended by the section is that no court shall take cognizance of any offence under the section unless the Government have deliberately sanctioned the prosecution of these particular articles. Your Lordship will have noticed how imperative the section is about sanction being that of "The Governor-General in Council," &c. This is the authority which is produced, and I submit that it is not sufficient authority to proceed against the prisoners for an offence under section 124A.

His Lordship: Well, assuming that the order is not in accordance with section 196, what follows then?

Mr. Pugh: It follows that this Court cannot take cognizance of the offence. I would refer your Lordship to a recent case which came before the Privy Council, *viz.*, the case of the Queen *vs.* Yussuffudin. The accused had been arrested on the Railway at Hyderabad under a warrant issued from Simla. He was taken to

Umballa and the trial proceeded there. An appeal was in the meantime made to the Chief Court of the Punjab on the grounds that the arrest was illegal, and as the warrant was void the whole proceedings were illegal. The Chief Court stopped proceedings and an appeal was made to the Privy Council, and it was there held that the arrest was illegal and also the proceedings following and the case was quashed. Your Lordship will remember another case decided by your Lordship with regard to sanction to take action against Native Princes and Chiefs. The sanction was taken after the institution of the suit, and was vitiated in consequence (see I. L. R. XXI., Bom. 351).

After tiffin First day.

Mr. Pugh having quoted B. L. R. No. 8, p. 32, and Allahabad Law Report, No. 3, page 215, said :—

The prejudice of the accused is this. The accused have a right to demand that the prosecution should be sanctioned by the Government, and the prejudice of the accused presupposes that that sanction has not been obtained, because the law provides that there shall be no prosecution unless the sanction of the Government has been obtained with reference to the particular offence with which he has been charged. Clearly he is prejudiced ; supposing that he is likely to be tried and may be convicted without any sanction of the Government whatever. So far it does not appear that Government ever formed an opinion as to whether those charges were proper to be proceeded with against them. But in this case there is a material distinction ; before he was tried at the Sessions, Government had given their sanction subject to that, my Lord, I am bound to say, that the judgment in that case—the judgment of the Full Bench.

Now, my Lord, it will not be for me to argue the point, but what I say is this. You have to consider what the Chief Justice and Mr. Justice Bayley said with reference to the facts before them. The question was one with regard to committal. They held that the commitment was irregular. I do not find, my Lord, the case which was decided by Chief Justice Westropp which is reported in the colums preceding this.

His Lordship : The case you refer to was a Full Bench case.

The Advocate-General : Yes, my Lord.

His Lordship : And the decision of Mr. Justice Westropp was in the Full Bench case.

Mr. Pugh : No, my Lord. We have now the subsequent judgment of the Privy Council which shows that in a case like this the arrest is illegal and every thing that follows the arrest must therefore be illegal also.

His Lordship : That case had nothing to do with the committal to the Sessions ; that was the case before the Magistrate. The Privy Council were not dealing with section 532 C. P. C.

Mr. Pugh : Supposing the arrest was *ab initio* illegal and that it fell through, all the subsequent proceedings are illegal.

His Lordship : I quite agree with you, but supposing the commitment to the High Court were illegal for want of proper sanction. Section 532 C. P. C. does not create any particular exception to the general principle.

Mr. Pugh : The Full Bench said it was an irregularity. What I venture to suggest is that they have treated want of jurisdiction as an irregularity. It

can be proved that in the Yussuffudin case there was a want of jurisdiction on the part of Colonel Dobbs, but it is an irregularity which can be cured. If the arrest is illegal, then whatever proceedings are taken in pursuance of that must be illegal also; and section 532 deals with the particular case with regard to commitment. In the case before the Full Bench there was a commitment before the sanction of the Government had been obtained, and therefore they said that the man has been prejudiced. In the present case there is no sanction even up to the present day.

Advocate-General: I have it here.

Mr. Pugh: I have had no notice of any previous sanction. My learned friend has been very good with regard to matters that have been put in hitherto, but some of the papers came late last night. I have no complaint against that, and I am dealing with the case as it stands before your Lordship. A sanction which produced after action is no sanction at all. The case before Mr. Justice Westropp as this (*reads it*). The accused was a Deputy Magistrate, &c.

His Lordship: What is the reference.

Mr. Pugh: Vol. 8, page 35, H. C. Law Report, Crown Cases. It is material to turn to section 537 in particular, apart from the irregularity want of any sanction under section 195 may be cured but not under sections 196 or 197 (*reads section*).

That, my Lord, is amply sufficient to cover a case triable before a Sessions Court "Any error or o mission or want of sense, &c." (195).

Section 196 could not be covered under that. I submit to your Lordship that there is no section under which it can be covered. There is a case, my Lord, in the Allahabad Law Report, page 258, before the Full Bench, and it was found that the proceedings were illegal *ad initio* and ought to be quashed. I say, my Lord, that the decision of the Privy Council does not deal with the question as to what would be the result supposing that case had gone on to commitment, but at the same time what I submit is that it covers it.

His Lordship: Would you mind reading the case, Mr. Pugh.

Mr. Pugh: After reading case, added "Nor except for the purpose of this particular case." What I venture to submit to your Lordship is that supposing these proceedings had gone further and supposing the Magistrate at Umballa had committed him for trial to the Sessions and the Sessions Court had proceeded to deal with it. That court would not be in a better position than the lower court. The accused would not be prejudiced thereby, supposing there is no jurisdiction to try him. Even if the Government has not given their sanction. On this ground, my Lord, I submit that this sanction which has now been tendered cannot be accepted and ought not to be accepted, and that it is void upon the face of it.

The Advocate-General reads section 196.

The section does not say that the order is to be in writing. All that it says is that the court is to be satisfied that the prosecution is authorised by the local Government. Here we have the evidence of Mr. Baig who states that he instituted this particular prosecution by the orders of the Government. This particular prosecution is based upon information he had laid before the Police Magistrate. The pro secution is expressly directed against the two articles which have been read to the jury and are the subject of this charge, and therefore I

submit that there is no want of jurisdiction in any way, but even if there was, the section which your Lordship has referred to would cure it. I have not in my hands a document. It is an order of H. E. the Governor, which I will tender in evidence, which directly states that the prosecution was started against certain articles which appeared in the *Kesari* newspaper. (Hands document to Mr. Pugh.)

Mr. Pugh: I do not know whether your Lordship ought to admit this before the first question is settled. Whenever it is tendered I shall certainly object to it. The ground of my objection is that it is dated 30th August and is subsequent to the prosecution. It raises a different point from the one I was arguing before your Lordship. It does not purport, my Lord, to be the present sanction. It is a declaration of H. E. the Governor in Council of the particular meanings attaching to the words in the article at the time they raised the former sanction. It ought not be admitted. I tell you, my Lord, that there is no authority in law for a declaration of this nature being afterwards received. Your Lordship can construe it. Your Lordship would not be entitled to receive a declaration like this as to what the meaning of it was. The meaning of it does not appear from the face of it.

His Lordship: Does it not show under section 196 that the first complaint was made on the authority of the Government.

Mr. Pugh: No, my Lord. It is for your Lordship to construe and not for his Excellency the Governor to say what was intended by it.

His Lordship: It does not refer to the complaint. It refers to the original order. There are two points; first of all you have the order of the Government, and secondly, you have the authority of the Government.

Mr. Pugh: This document purports to be the written sanction of H. E. the Governor, of 26th July 1897; it is for your Lordship to construe; it is not H. E. the Governor who has to construe. Your Lordship only is authorised to give a decision on the point.

His Lordship: Supposing this new document says that a complaint was made by Mr. Baig and that sanction was given by Government, in that case, your objection becomes void.

Mr. Pugh: I was trying, my Lord, to exercise my mind as to what might possibly turn up. This is a result I did not contemplate (laughter.)

His Lordship: It shows the inconsistency or the weakness of the first order (laughter).

Mr. Pugh: They knew that the first order was bad, but H. E. the Governor cannot construe a written document. That is to be construed by a court of law. He cannot put any construction upon it any more than a private individual can. I submit to your Lordship that this matter is perfectly clear.

His Lordship: Let me have the document.

Mr. Pugh: With regard to this document we say that Government were satisfied that the first sanction was insufficient, and on some advice or the other.

His Lordship: Perhaps they anticipated you would object.

Mr. Pugh: They anticipated that it required to be fortified and that it could not stand alone. The Governor, probably on the advice of one of the Secretaries to Government, have taken upon themselves to construe it, and told your Lordship

and the jury what the meaning was. That is not a question for the jury. That is a question for your Lordship and your Lordship only. What I submit is that it is abundantly clear that the first sanction of the 26th July 1897 is not a sanction within the meaning of section 196 of the C. P. C., and does not entitle any man to be charged under section 124A. I ask your Lordship to say this is so. I say my Lord, that according to the ruling of the Privy Council that the arrest was fully illegal and void, and that all further proceedings in consequence of it also void.

His Lordship having read section 196, said : In this case the complaint has, been made, and the complainant in the witness-box has stated that the complaint was made by the order of the Government. Mr. Pugh has objected to it on two grounds. But first of all let me say that it is an order for the prosecution of these persons in respect of certain articles appearing in the *Kesari*. Mr. Pugh said in the first place that these incriminating documents are not articles at all. That one is a poem and that the other purports to be report of certain speeches made at the Shivaji celebration. In the second place he has said that it is not an order under section 196, because here are no particulars on the order in respect to any particular date or article. And he says that because there has been an omission of these particulars there can be no order under section 196 for prosecution. Now, in the first place it appears to me that the first point is not sustainable. I think that no man of reasoning or commonsense could construe as to hold the order so literally that nothing but articles in the sense of articles themselves or excluding poems, reports or advertisements could be acted upon. I think what the Government truly meant was that there was this matter published in newspaper, was this matter of complaint in that newspaper ? Supposing the order had said: "I hereby order Mr. Baig to prosecute Bal Gangadhar Tilak in respect of articles appearing in the *Kesari* of 15th June," such order would not cover this poem. I do not think Government have used the word article in its strict and literal sense. It means general objectionable matter that may be construed to be objectionable to appear in paper, whether it is an article, or a poem, or an advertisement, falls within section 124 A I. P. C. The order was therefore for the prosecution of both these persons in respect of certain articles. Nothing can possibly be more clear than that. There were certain articles against which Government had ordered a complaint to be made. The *Kesari* had been published for the last 17 years. It is impossible for me to say that the prosecution would have been brought on, had the complaint not been made in consequence of that order. As regards the second point there is nothing to show that the order must be in writing. There is no particular form required. All that the court has to see, in my opinion, is whether Government has authorised the prosecution. The object is to prohibit private individuals from starting state prosecutions. If the court is satisfied that this state of things does not exist, then it is a regular prosecution and the provisions of section 196 are satisfied. There is no doubt in my mind that Government has authorised these prosecutions. Since the first order was made it was supplemented by something more definite. It may be a matter of distinction, but it is not a matter which affects the legality of the prosecution. But suppose it was not so. Suppose for a moment that the order was not made, what is the result ? I think I am bound by the procedure of the Full Bench to hold that

section 532 applies. Section 196 deals with courts taking cognizance of offences upon complaints made by the orders of Government. This expression "Taking cognizance" is an expression applicable to a Magistrate's Court. The High Court could not take cognizance of complaints. The High Court takes cognizance after commitment. It is perfectly true that if the Magistrate had no jurisdiction to commit then the High Court has no jurisdiction to take the accused upon commitment. In this case I see no difference between sections 196 and 197. Mr. Pugh suggests that there having been subsequent sanction the accused were not prejudiced by the absence of the original sanction. That argument by implications (that section 532 applied). The accused in my opinion has not been shown in any way prejudiced by any want of definiteness in this order of Government. If the accused or his advisers before the commitment had made no objection to the indefiniteness of the order of Government, the section 532 would not apply. Although this was an order in the Magistrate's Court from the very early day of the proceedings, no objection of any sort was made to it on the ground that it was not sanctioned. I therefore take it that the objection cannot now be made.

Mr. Pugh: I would ask your Lordship to be pleased to reserve your order on this question for later discussion.

His Lordship: Yes. I think, Mr. Pugh, it would be more convenient to do that afterwards.

The Advocate-General: I put in the order to prosecute the second accused.

Mr. Mirza Abbas Ali Baig, in cross-examination by Mr. Pugh, said:—

Q. You told us, Mr. Baig, that you are the Oriental Translator to Government.—*A.* Yes.

Q. What is your Vernacular language?—*A.* Urdu.

Q. I may take it that its classical basis is Persian.—*A.* Yes.

Q. Mahratti, I suppose, you learnt in the course of your studies?—*A.* I have studied the language.

Q. The classical basis of that is Sanskrit.—*A.* Yes.

Q. Am I right that you are residing in Poona?—*A.* For the present.

Q. Have you lived there for a very considerable time?—*A.* For a very long time.

Q. What about how long? I do not want the exact date. I think you resided in Poona as a boy.—*A.* From my boyhood.

Q. You know Tilak, the first accused?—*A.* Yes, lately.

Q. How long since?—*A.* More than a year and a half, or two years.

Q. You mean you personally knew him?—*A.* Not intimately.

Q. You knew him better as a public man?—*A.* Yes, by reputation.

Q. Yes, knew him by reputation as being a prominent public man.—*A.* Not for very long time, three or four years.

Q. Do you remember the first Shivaji commemoration festival?—*A.* I do not recollect it.

Q. Arya Bhushana Press is the name of the Press where the *Kesari* and the *Mahratta* are published?—*A.* I believe so.

Q. Do I understand that it was under the instructions of the Government that you laid the complaint in Bombay?—*A.* Under the orders of the Government.

Q. Now, just tell me with regard to your duties as an Oriental Translator. Is it one of your duties to translate the passages from Native newspapers; any papers that are sent to you?—*A.* Yes, papers sent to me by Government.

Q. Can you tell us when the paper of the 15th June 1897 containing this article was sent to you for translation?—*A.* I do not recollect; so many papers are sent to me.

Q. Try, because it is not three or four years back.—*A.* I have no reason to remember this particutar date.

Q. You say you can give the date of your receiving the sanction of 26th July 1897.—*A.* It may be a fortnight before the order. I do not exactly recollect. It may be a little more or less.

Q. Now, you read some of the Bombay papers, I suppose?—*A.* I do.

Q. I know that some of them have been calling for some time before this prosecution, for the prosecution of Mr. Tilak upon these articles.—*A.* Yes, it is so. Not of Tilak particularly, but of certain seditious papers.

His Lordship: Not of Tilak in particular?—*A.* No.

Mr. Pugh: You mean to say that that did not strike you?—*A.* I think it did not strike me that they particularly asked for Tilak's prosecution. I have read all the papers having articles about the desirability of prosecuting some seditious papers.

Q. Do not you know that these particular articles have been commented upon in the daily papers of Bombay?—*A.* Well, so many articles are commented upon and these are among them. Not the Shivaji utterances, but the speeches were commented upon.

Q. Shivaji's utterances were not commented upon?—*A.* So far as I remember.

Q. Do you say that speeches were commented upon?—Do you mean that Professor Bhanu's speech was objected to?—*A.* No, I believe Tilak's speeches were objected to.

Q. Tilak's speech only was objected to?—*A.* So far as I think the letter of "Justice" in the *Times of India* was concerned.

Q. I am asking with regard to what you remember. You say that the Shivaji's utterances were not objected to. That Bhanu's speech was not objected to. But that Tilak's speech was objected to. At the time when Tilak's speech was objected to in the papers of Bombay was the translation before you, or did you begin it, or did you receive it?—*A.* So far as I remember the translation was made before I read "Justice's" letter.

Q. With regard to that you are not very clear, I think?—*A.* No.

Q. You cannot tell me any other thing with regard to that?—*A.* No, all I can say is that it has no connection with "Justice's" letter.

Q. I am only asking you to try and give me the time when you translated the article.—*A.* I suppose the translation was complete before I read "Justice's" letter.

Q. You remember questions being asked in the House of Commons?—*A.* Yes, subsequently to my translation.

Q. The questions were, I think, put by Sir Ashmead Bartlett and Sir M. M. Bhavnagri ?—*A.* I remember Sir Bhavnagri's question, but it was after my translation.

Q. Now, can you carry your mind back so far as to tell me when you became acquainted with this movement for the commemoration of Shivaji ?—*A.* I do not take any interest in it.

Q. Nor in the history of Shivaji ?—*A.* The history of Shivaji is well known to everybody.

Q. Do you remember the meeting being held in 1885 in Poona called at the request, among others, of Justice Ranade at which resolutions were passed for repairing the tomb of Shivaji ?—*A.* In 1885 I was not an Oriental Translator.

His Lordship: You do not remember the meeting ?—*A.* I knew the movement for repairing the Shivaji's tomb. I have read of it, but I do not recollect where.

Q. Let me try and help you again. You know the book of Bombay by Mr. Douglas ?—*A.* I know Bombay itself (laughter). I have never heard of the book of Bombay.

Q. Do you remember having read about the meeting which was convened at the request of Justice Ranade ?—*A.* I remember reading about the movement to repair Shivaji's tomb.

Q. How many years ago you cannot tell ?—*A.* No.

Q. Do you happen to remember the time of Lord Reay ?—*A.* Yes, certainly.

Q. You remember that Lord Reay took interest in this movement ?—*A.* I have read references to that in the papers. I have no personal knowledge of the matter except derived from the papers.

Q. Have you seen Shivaji's tomb ?—*A.* No.

Q. You do not know whether Lord Reay allowed money for the repair of it ?—*A.* I do not know.

Q. Well, now, passing from Mr. Douglas's book of Bombay with which you are not acquainted, you are acquainted with Mr. Acworth's Marathi Ballads ?—*A.* I have read something of it in the papers. I have not seen the book.

Mr. Pugh here put in a copy of an article from the *Kesari* of 23rd April 1895. (*Exhibit* No. 1.)

The Advocate-General: Is it the High Court Translation ?

Mr. Pugh.—That article in *Kesari* of 23rd April 1895 shows that there was notice issued in the *Native Opinion* making an appeal to the people to have the tomb repaired. In Douglas's book of Bombay attention was first called to the want of repairs of this tomb in 1883. The matter went on to 1885; a small grant was made by Lord Reay. Mr. Acworth published his ballad in 1891, and in these ballads there was a good deal to rouse the attention of the people. Things then went on to 1895. In 1895 came out Douglas's book of Bombay and Western India. I think after publication of that book Mr. Tilak comes on the scene on 23rd April 1895. He takes up the appeal made by the Bombay paper called the *Native Opinion*.

His Lordship: The substance of that is to prove that an appeal was made in the *Native Opinion.*

Mr. Pugh: It was an appeal to get Shivaji's tomb repaired and to get subscriptions from it. Here is an article of *Kesari,* dated 30th April 1895. My Lord, we have not got free translations yet; that only carried the matter one step further. It contains a letter from a student advocating the repairs and sending a subscription of 2 annas of his own. After that it grows quickly. The article of 4th June 1895 is also translated. I will put that in to-morrow. The purport of that is that a meeting was called in order toformulate the committee for the purpose of——

His Lordship: So far, it was simply a question of repairing the tomb.

Mr. Pugh: Up to that time it was a question of repairing the tomb. Movements like these are likely to flag unless there is an opposition, and the *Times of India* came to its rescue. It first denounced the movement followed by letters in favour of the movement, the result of which was that subscriptions began to flow in to the extent of Rs. 20,000, and then the commemoration began to take shape. (Reads *Times of India,* dated 29th May 1897.) (*Exhibit No.* 2.)

With regard to the correspondence that followed the leader in the *Times of India,* Mr. Pugh put in the letter signed "B in" the *Times of India,* dated 11th June 1895. * (*Exhibit. No.* 3.)

Cross-examination continued by Mr. Pugh.

Q. Do you know the book called the *Balbodha* ?—*A.* No.

Q. It is read in Marathi Schools supported by Government ?—*A.* It was published long after my school-days; I have not seen it before.

Q. Nor heard of it ?—*A.* No.

Q. Molesworth's Dictionary is a leading authority in Marathi ?—*A.* Yes.

Q. Your translation is a little high flown ?—*A.* It is not my translation. It is the High Court translation.

Q. The original translation in the Police Court is yours ?—*A.* No, that was not mine either.

Q. You have read these articles yourself ?—*A.* Yes.

Q. Have you been through these articles ?—*A.* I have read these two incriminating articles.

Mr. Pugh here showed to his Lordship the page of translation made on behalf of the defence in these pages. The official translation is printed on one side and the literal translation by its side.

He said: I have, my Lord, the literal translation and what is called the free translation: both of them are certified by the Court translator.

His Lordship: The free translation is the one put in by the Advocate-General.

Mr. Pugh: Yes.

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* The other documents in the case were put in by the defence the next day, 9th of September.—K. G. D.

His Lordship: Then you put in the literal translation also certified by the Court translator. The free translation does not tally with the literal translation?

Mr. Pugh: You will see they are side by side.

Mr. Pugh to the witness: Literal translation is the correct translation, because the official translation gives two versions?—*A*. No, I do not think so The original is much stronger than the translations put in. The original has two meanings. The original is capable of bearing two meanings which are not given here in the literal translation.

Q. You said that the literal translation contains words which have two meanings, will you give me those words?—*A*. Yes, if you give me the translations.

Q.—I want to know on what word you rely as meaning persecution?—*A*. If I had the original Marathi with me I shall point it out.

Q.—What word is there which has two meanings?—*A*. (करें) *Karen*. It means "by the hand" or "in the shape of taxes." The passage means "foreigners are persecuting the goddess of wealth, and dragging her violently by the hand."

Q. Now just give me the word which means persecution?—*A*. (छळणें). *Chhalane*. The other meaning is: foreigners are taking away wealth in the shape of taxes.

His Lordship: Just now you told me that certain words have two significations. Can you give us any other word except *Karen*?—*A*. Lakshmi is the goddess of wealth personified, or wealth simply. The second meaning is that foreigners are taking away wealth in the shape of taxes, by oppressing and harassing the people.

Q. Where is the word for "the people" in the original?—*A*. There is nothing about people in that.

His Lordship: There is substantial difference between the two translations.

Mr. Baig: Probably it may be intended for both.

Mr. Pugh: Will you mention any authorised dictionary where *Chhalane* means persecution or by means of persecution?—*A*. छळुनी. *Chhalane* means harassing.

Q.—Do you say that there is no word occurring in the text which according to any authorised dictionary means "persecuted" or "by means of persecution?" —*A*. *Chhalane* means harassing.

Q.—You are a Marathi Scholar. Will you mention some authorised standard dictionary which shows that *Chhalane* means persecution or by means of persecution. There was some discussion at this stage about the meaning of *Chhalane* when the court adjourned till 11 o'clock, Thursday, 9th inst.

The Court re-assembled on the 2nd day, Thursday, the ninth, and the Jury having been called and the prisoners surrendered, Mr. Pugh said:

I spoke, my Lord, yesterday of some articles which I wish to put in, and I showed my learned friend that it would be convenient for me to tender certain articles now. I will ask the Oriental translator further questions afterwards.

His Lordship: Very well.

Mr. Pugh : The first article I put in appears in the *Kesari* of the 15th December 1895, thanking Lord Reay for his interest in the movement to repair the tomb of Shivaji.

His Lordship : I suppose it is in the *Kesari* and is a leading article.

Mr. Pugh : I have received the translations, my Lord, which will have to be certified during the course of the day. It purports to be the leading article or notice. It is not a contribution or letter.

To the Advocate-General : Do you wish me to read?

The Advocate-General : Yes.

The Clerk of the Crown then read the article in the *Kesari* of the 15th. December 1885. (*Exhiblt No.* 4.)

Mr. Pugh : Next, my Lord, is an article in the issue of the *Kesari* of the 23rd April 1895, which I put in yesterday. It has not been read and I now have the translation.

The Clerk of the Crown then read the article. (*Exhibit No.* 1.)

Mr. Pugh : The next article I tender is an article appearing in the issue of the *Kesari* of the 30th April 1895. It is an editorial note upon the letter of "Student."

The Clerk of the Crown then read the article. (*Exhibit No.* 5.)

Mr. Pugh : Next, we have an article in the *Kesari* of the 4th June 1895. It is not officially certified. It will be certified to-day and printed, subject to that, I ask leave to put it in. It gives an account of the meeting of the 30th May 1895, and a summary of what had been done in regard to Shivaji's tomb since 1885.

The Clerk of the Crown then read the article. (*Exhibit No.* 6.)

Mr. Pugh : That finishes 1895. Now we proceed to 1896. The next article is in the *Kesari* of the 14th April. It will be officialised and printed to-day.

Clerk of the Crown then read the article. (*Exhibit No.* 7.)

Mr. Pugh : Next, my Lord, is an article in the *Kesari* of the 21st April 1896. This has been printed, but is yet to be certified. It is an account of the first celebration in honour of the birth-day of Shri-Shiv Chhatrapati at Raigadh.

The Clerk of the Crown then read the article. (*Exhibit No.* 8.)

Mr. Pugh : With regard to the next matter, my Lord, which is the death of Afzulkhan, I do not think there would be any question as to my putting in the copy of the *Times of India*, in which there appeared a report of the lecture delivered on the 21st of April 1894 by Professor Karkaria at the Asiatic Society's meeting. I do not want to enter into the detail and shall be glad to be relieved of reading it.

The Advocate-General : I do not think you need read it.

His Lordship : Was there a controversy with regard to killing of Afzulkhan?

Mr. Pugh : Yes, my Lord. Professor Karkaria's lecture was noticed in the *Times of India* of the 21st April 1894, and there was some controversy on the subject.

His Lordship: As to whether or not Shivaji assassinated Afzulkhan.

Mr. Pugh: I am not going to argue that question before the jury. Mr. Karkaria started it and "M. J." comes forward in the *Times of India* of the 7th March 1896 to controvert Mr. Karkaria's view. (*Exhibit No.* 10.) On the 10th of March 1896 Mr. Karkaria replies (*Exhibit No.* 11), and on the 7th of April 1896 "M. J." sends a rejoinder to Mr. Karkaria. (*Exhibit No.* 12.) I tender the articles of 21st of April, 7th and 10th March, and 7th April 1896.

Mr. Pugh: I now come to the matter which appears in the *Kesari* of the 24th of March 1896. It is an announcement of Professor Bhanu's lecture at the Deccan College on the 28th idem.

Clerk of the Crown read the article. (*Exhibit No.* 13.)

Mr. Pugh: Next, my Lord, is a report of the speech of Professor Bhanu which refers to the article just read. I propose to put in a report which appears in the Deccan College Quarterly. This was a meeting at which Professor Bain presided. The Magazine is dated 8th April 1896, and I propose to put in the report of the speech, and also a note on page 31, with regard to Professor Bain. I suppose Mr. Baig would be able to tell us about this Professor.

The Clerk of the Crown read the article. (*Exhibit No.* 14.)

Mr. Pugh: In the *Times of India* of the 5th March 1897 there is a contribution under the signature of "A. T. C." under the heading "STRAY LEAVES FROM MY NOTE BOOK." I only want to call attention to the first paragraph. (Mr. Pugh then read the last para.) I shall have this printed to-morrow. (*Exhibit No.* 15.)

Mr. Pugh: The next article I have to put in, my Lord, is a copy of the *Times of India*, dated 8th July 1897, containing a letter from Professor Bhanu explaining his speech at the Shvaji celebration meeting.

His Lordship: Are these contributions?

Mr. Pugh: Yes, my Lord, a letter from Professor Bhanu.

The Clerk of the Crown then read the article. (*Exhibit No.* 16.)

Mr. Pugh: Next, my Lord, I tender the copy of the *Times of India* of the 30th June 1897 containing a letter from Mr. Tilak. The heading of it, I take it, is not part of the letter, but put there by the editor.

The Clerk of the Crown then read the article. (*Exhibit No.* 17.)

His Lordship: To what does this refer? There is nothing in the articles complained of about the plague.

The Advocate-General: There is nothing about the plague in the incriminating articles; this is a reply to an attack made upon him by somebody.

Mr. Pugh: Yes, an attack made by "Justice" and "Shackles" in the *Times of India.* Attacks apparently, my Lord, upon his attitude with regard to the plague operations.

His Lordship: The Advocate-General has put in one or two articles relating to the plague administration at Poona. It will be useful to know if this letter is a vindication of those particular articles.

The Advocate-General: Nothing of the kind.

His Lordship: Any explanation with regard to the article would be very useful.

Mr. Pugh: What appears to me from this letter, my Lord, is that a charge of obstructing the plague operations of Government was made against him, and he says, on the other hand, that he helped them. He co-operated with them so far as he could. There is also the complaint that he has been charged with sedition. My learned friend, the Advocate-General, will have an opportunity of explaining what the bearing is of the article that he has put in.

The next document I wish to tender is a letter from the Private Secretary to H. E. the Governor, dated 9th March 1897. I will read it. (*Reads.*) (*Exhibit* No. **18**.)

Mr. Pugh: Does my learned friend produce the memorandum which is referred to in the letter?

The Advocate-General: We have not got it.

Mr. Pugh: You will admit that we have given you notice to produce it? (*Reads letter from press copy book.*)

The Advocate-General: No; you simply asked whether we could produce it. We said we could not undertake to produce it, and you had better subpœna the proper official. You asked whether we undertook to produce it, and we declined.

Mr. Pugh: You will not object to this copy going in.

The Advocate-General: I have not seen the copy, and I can't admit it as I do not know whether it is correct.

Mr. Pugh: I tender the letter. I cannot carry the point further. We are unfortunate in not being able to produce the original. The only reason why I am anxious to produce that memorandum is to show you what suggestions were made to Government by Mr. Tilak on the subject of the plague. I will ask my learned friend if he does not see his way to admit the printed copy I have.

His Lordship: The Memorandum about the Plague operations which was sent to Mr. Rand?

Mr. Pugh: Yes, my Lord, and read by H. E. the Governor with much interest.

His Lordship: Is the date of the memorandum mentioned in the letter?

Mr. Pugh: I do not think so. My learned friend will not object to taking it that the memorandum was dated 8th March 1897. I put, in this connection, a copy of the *Mahratta* of Sunday, 4th April 1897, giving an account of a deputation to Mr. Rand. It is for the purpose of showing what the purport of the memorandum was which I am unable to produce.

His Lordship: There is nothing in these incriminating articles relating to the plague?

The Advocate-General: No, my Lord.

Mr. Pugh: My object is to show that Mr. Tilak was co-operating with the Government instead of seeking to "subvert and overthrow it." What I want to say of these articles is, that, instead of trying to subvert and overthrow Government, he was co-operating with Government. He was assisting Government—a position wholly inconsistent with the charge of sedition. That is my object in putting this in.

His Lordship : The object of the incriminating articles is to show the prisoner sought to excite feelings of disaffection against Government. You are now now putting this in to show that this was not possible, and that he could have had no such intention.

Mr. Pugh : I would venture to go further, my Lord. I say it is impossible, for a gentleman who co-operates with Government in plague operations against the will of his own countrymen, and incurring their odium for this action, to desire the overthrow of Government.

His Lordship : It shows good intention with regard to the plague, and that these articles of the charge cannot have a bad intention.

Mr. Pugh : They must have an intention to subvert or overthrow British Government, as my learned friend, the Advocate-General, has said.

His Lordship : I do not think the Advocate General said anything about overthrowing the Government. He said, the intention was to excite people to disaffection.

Mr. Pugh : I have in my notes that he said that the prisoners had taken advantage of this celebration, to induce the people to be disloyal, and to subvert and overthrow the Government. To controvert this, I put in these articles.

The Clerk of the Crown reads the article in the *Mahratta* of 4th April 1895. (*Exhibit No.* **19**.)

Mr. Pugh: I have endeavoured to take a few of these articles, as I feel it is absolutely necessary for me to show you what his attitude was during the three months immediately preceding the appearance of the articles complained of.

I put in copies of the *Kesari* of 9th and 16th February, 1897 containing articles about the plague.

The Clerk of the Crown reads letter of 9th February, which relates to the levying of revenue in Khandesh and Kolaba Districts. (*Exhibit No.* **20**.)

Mr. Pugh: Next is the *Kesari* of 16th February 1897, regarding Bubonic Plague and Government.

The Clerk of the Crown reads the article. (*Exhibit No.* **21**.)

Mr. Pugh : Next, my Lord, I will put in the *Kesari* of the 9th March 1897, regarding the new scheme for checking the spread of epidemic fever. With your Lordship's permission, to relieve the Clerk of the Crown, I will read the article.

Article, having been read, was marked as *Exhibit No.* **22**.

Mr. Pugh : My Lord, I will next put in the *Kesari* of 16th March 1897, headed the "Present Violence in Poona."

The Clerk of the Crown having read the article it was marked as *Exhibit No.* **23**.

Mr. Pugh : The last of this series is a translation from the *Kesari* of the 18th May 1897, notifying that the plague operations would cease on the 10th May, and advocating the desirability of continuing the Hindu Plague Hospital.

The Clerk of the Crown having read the article it was marked *Exhibit No.* **24**.

Mr. Pugh: The next article I put in does not relate to the plague operations. It is dated 1st June 1897. It is for the purpose of preparing the minds of the people for the Shivaji meeting; it appears in Marathi in the *Kesari*, and is headed "Hero-Worship." It is an epitome of Carlyle's brilliant Book on Hero-Worship. I am relying upon the copy, because that translation is being officialised.

Mr. Pugh reads the article. (*Exhibit No.* 25.)

Mr. Pugh: The next, my Lord, and I think the last, are three articles with regard to the Jubilee Celebrations.

The first is dated 8th June, the second, 15th June, the date of the incriminating articles, and the third is dated 22nd June 1897.

At this stage the Court rose for tiffin.

On resumption at 2-45 P. M., Mr. Pugh, addressing the Court, said: In the absence of the Clerk of the Crown, I will read these three Jubilee articles.

His Lordship: I see they are printed together.

Mr. Pugh: Yes, my Lord, one after the other.

His Lordship: Consecutively, so that they can come as one exhibit. [*Exhibits* 26 (1), 26 (2), 26 (3).]

Mr. Pugh reads the articles.

Further Cross-Examination of Mr. Baig.

Mr. Pugh: Mirza Abbas Ali Baig was again recalled for cross-examination by Mr. Pugh.

Q. Do you know Professor Bhanu?—*A.* Not personally.

Q. He is a Professor in the Ferguson College—*A.* I hear so.

Q. It is a State-aided college.—*A.* Yes.

Q. Is he there still?—*A.* I think so.

Q. Do you know Professor Bain? He is a Professor in the Deccan College?—*A.* Yes.

Q. And that also is a State-aided college?—*A.* It is a Government college.

Q. I asked you yesterday, Mr. Baig, with regard to the translations being sent to you by Government. I believe that when they are sent to you, you send them back with all despatch?—*A.* Yes, I despatch them as quickly as possible.

Q. In a day or so?—*A.* Yes, sometimes in three or four days.

Q. Have you anything to do with the getting-up of summaries of prominent articles, appearing in the native papers, against Government?—*A.* No.

Q. I asked you yesterday about Molesworth's Dictionary. You told me it was a standard authority?—*A.* Yes.

Q. You know I presume that there is a Dictionary in the Marathi language compiled by some seven *Shastris*?—*A.* Yes.

Q. It is from Marathi to Marathi and published in Bombay in 1829. That is also a standard authority?—*A.* It is an authority.

Q. Am I right in supposing that it is the basis of Molesworth's Dictionary?—*A.* I am not sure of that.

Q. You yesterday spoke of some letter of "Justice" in the *Times of India*?—*A.* I did.

Q. When did you read it?—*A.* I read it after I made the translation of the article in *Kesari* of the 15th June. My attention was drawn to it when I was examining the *Kesari* of the 22nd June. I do not remember the exact date of "Justice's" letter, but it was referred to in the *Kesari* of the 22nd June.

His Lordship: Your attention was directed to the letter of Justice; have you read Justice's letters?—*A.* I remember having read one.

Q. Is it a fact that Justice said that he saw nothing objectionable in the speeches of Professors Bhanu and Jinsiwalle?—*A.* I do not recollect about Jinsiwalle. I remember, he said there was nothing objectionable in Bhanu's speech.

Mr. Pugh: I put in, my Lord, the translation of the passage in the Dictionary of the Marathi language that I referred to yesterday. There are literal and free translations side by side. (*Exhibit No.* 27.)

His Lordship: You mean the literal and free translations together?

Mr. Pugh: First of all they are on different lines, the original Marathi, then the Marathi in Roman character, then a word-for-word translation.

His Lordship: It is not a complete translation of both the articles.

Mr. Pugh: No, my Lord, it is a complete translation of the article headed "Shivaji's Utterances."

His Lordship: Complete as regards the first article only?

Mr. Pugh: We have not done it with regard to the rest, excepting a passage in Professor Bhanu's speech.

Mr. Pugh: I tender the translation from the Dictionary I have referred Mr. Baig to, regarding the word *Dada.* It is described as "such access of grievances as are fit to be represented by a helpless man to Royal authorities, such as a king, &c."

His Lordship: What is the word?

Mr. Pugh: *Dada.* Your Lordship will find it at page 8, line 40.

Mr. Pugh then read the translation. (*Exhibit No.* 28.)

His Lordship: It is a representation of injuries.

Mr. Pugh: Yes, your Lordship.

His Lordship: Such access of grievances as are fit to be represented to the authorities. It shows that *dada* means a representation.

Mr. Pugh: Such access of grievances as are fit to be represented by a helpless man to the Royal authorities, &c.

His Lordship reading, said: "There is no *Dada* in this kingdom." *Dada* is, I suppose, a grievance or what is called an access of grievance.

Mr. Pugh: If your Lordship reads on, it will give you the meaning.

His Lordship: It cannot mean "grant," a "representation."

Mr. Pugh: "To grant a prayer upon a representation."

His Lordship: "There is no *Dada* in this kingdom." What does that mean?

Mr. Pugh: In such cases if no complaint is made no notice is taken thereof. You must represent to the powers your grievances.

His Lordship: The idea of representation seems to be implied somewhere, I admit.

Mr. Pugh: Implied throughout, my Lord. Different illustrations are given with regard to the man making *Dada*, and the supreme power giving *Dada*; I cannot mean grievance itself because if there was representation, they would have to go before the authorities.

His Lordship: It is very difficult to gather what is the particular English word which most closely represents the word *Dada* (दाद).

Mr. Pugh: It means 'to make a representation.' You may speak to your sovereign power about the desirability of granting *Dada* (दाद).

His Lordship: What does Molesworth say about this word?

Mr. Pugh: I cannot read Marathi. I believe it is "Complaint," "representation of injuries," "redress of grievances."

His Lordship: This looks as if the word had two separate meanings. We must make a representation of our injuries. And that seems to be implied in this print which you have handed up. It does not mean granting complaint, but granting redress.

Mr. Pugh: What I say is that taking that in connection with the old Marathi Dictionary the word *Dada* (दाद) means, making a representation on the part of the subject to the superior power, and of the superior power granting redress on such representation.

His Lordship: In Molesworth, there is redress of grievances.

Mr. Pugh: It does not mean in any dictionary taking the law into your own hands.

His Lordship: No mention is made in which way redress is to be obtained. Redress may be obtained in a hundred ways.

Mr. Pugh: If you take the meaning of the word as given in the two dictionaries, it refers to a transaction between the lower and the higher. The lower makes the representation, and the higher grants redress on that representation. "Here we have a country where there is no *dada*."

His Lordship: The extract from the dictionary of the Marathi language rather favours that view. Molesworth gives simply the double meaning.

Mr. Pugh: It is much shorter. The other word which we shall have to go into, is on page 6, line 28, the word *sahilen* (सहिलें).

His Lordship reads the sentence: "Oh people, how you endured it!"

Mr. Pugh: The original word *sahilen* bears the sense of resignation, but no sense of retaliation.

His Lordship: The free translation has got 'tolerate.' That also has the idea of enduring, but suggests that it is in your power not to endure it if you like.

Mr. Pugh: Another way of putting it is why did you not take measures to put a stop to it. Another objection is, that in the original there is a mark of interjection, while the translation has got the mark of interrogation.

His Lordship: In the original it is put as a question, I think, is it not? You say it is a mere exclamation.

Mr. Pugh: In the original Marathi there is the interjectional mark and not the interrogatory mark.

His Lordship: I see you have it as a mark of exclamation.

Mr. Pugh: Yes.

His Lordship: These learned Pandits[1] knew Marathi much better than they knew English (referring to the explanation of the word *Dada*).

Then His Lordship reads from the dictionary about *sahilen* (साहिलें). That is what he is driving at. Now, let us see what Molesworth says about this.

Mr. Pugh (reading): "To suffer," "to bear," "to endure," "to undergo."

Mr. Pugh: Then, my Lord, I have a translation of three other words. The translations have not yet been certified, it will be done to-day. They occur in the speech of Professor Bhanu, third vernacular line from the top. "If one is pressing down the country from above (जर कोणी राष्ट्रास वरून खालीं दडपत असेल)."

His Lordship: What is the English of the words, "*varun khalin dadpat?*"

Mr. Pugh: The English of the words is, "Pressing down from above." According to the usual mode of speech in Marathi, in speaking of going down or pressing down, you use the word 'down' also. For instance, "I go downstairs, from above." Pressing down from above is merely, pressing. It has no other signification.

His Lordship: You mean "above" has nothing to do with it. How do you give it in the other translation?

Mr. Pugh: "If any one be pressing down the country from above, set him aside."

His Lordship: This is Professor Bhanu's speech.

Mr. Pugh: It is in Professor Bhanu's speech. We say that "from above" is redundant or tautological.

(Mr. Pugh showed Mr. Baig a translation from the Marathi of the word *varun*.)

Mr. Baig: What is this from?

Mr. Pugh: It is from the Marathi dictionary.

His Lordship: Is this from the same Marathi Dictionary?

Mr. Pugh: Yes, my Lord.

His Lordship: In the official translation it has "from above."

Mr. Pugh: So it does, my Lord.

His Lordship: What is your objection to the translation? How do you say it is superfluous?

Mr. Pugh: Here you have an example of how it is generally used. (Hands up document.)

His Lordship: It is not printed.

Mr. Pugh: No, my Lord, it is with the translator. I shall have it to-morrow morning.

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[1] The Pandits compiled the dictionary in the Marathi only. What Mr. Justice Strachey had got was, the official translation of the original passage in the dictionary.

His Lordship: How is it shown that the word is superfluous, or tautological?

Mr. Pugh: Your Lordship will see, that the translation does not seem to be complete, because you have the word *var*, alone. You have, for instance, in Marathi—*Madi varun khalin ootarla* (see *Exhibit* 29). *Khali* is the word used here with *varun*. *Varun khali ootarla* (came down from above).

His Lordship: Read the passage to Mr. Baig, who explained *Dadapane*, (दडपणें) as pressing down.

His Lordship: It is not pressing down then. There is another "down."

Mr. Baig: *Varun* is "above," *khalin* is "down," *dadapane* is to "press down." So that there are two downs.

Mr. Pugh: Do you mean up and down? (Laughter.)

Mr. Baig: What I mean is that 'above' was not intended to be implied. The sentence would have been complete without those two words.

His Lordship: Supposing the word *varun* was not there at all?

Mr. Baig: The *khali* would not be there.

His Lordship: *Dadapane* would be there?

Mr. Baig: You ought to get the sense 'from above.'

Mr. Pugh: Will you kindly listen to me, Mr. Baig. I want to know if I press this book so, (showing), I am pressing it *varun khali*?

Mr. Baig: One word would be sufficient.

Mr. Pugh: Is it not a usual expression to say *varun khali*?

Mr. Baig: You have not given me the sentence.

Mr. Pugh: I am not giving you a sentence. I ask you as a Marathi scholar if I am pressing my hand so, (showing), it shows that I am pressing *varun khali*?

Mr. Baig: *Varun khali* means from above down.

Mr. Pugh: If I press this with my hands, am I pressing it *varun khali*?

Mr. Baig: *Varun* is above.

His Lordship: *Varun khali* then are identical. Suppose you want to say pressing down?

Mr. Baig: (Reads.) I would say "*Rashtras jar koni dadpat asel*, (राष्ट्रास जर कोणी दडपत असेल)," If any one were to crush down.

His Lordship: Dadapane means, to press down?

Mr. Baig: Yes, my Lord.

His Lordship: Suppose you want to say, pressing down from above.

Mr. Baig: Then I would use the two words usual here—*varun khali* (*Rashtras varun khalin jar koni dadapat asel.*) If any one were to crush a nation down from above.

Mr. Pugh: What I want to ask you is whether it is not an ordinary form of expression for pressing down to say, *varun khali*.

Mr. Baig: *Varun* is above. It exactly corresponds with the English. *Varun khali* is, from above down.

Mr. Pugh: I ask you as a scholar whether it is not an ordinary expression?

Mr. Baig: I would like to have it put in a sentence.

Mr. Pugh: I cannot give you a sentence. You ought to know it as a scholar. You cannot press from below above.

Mr. Baig: Certainly not.

Mr. Pugh: Nor from above down; that would be tautology?

Mr. Baig: No, it emphasises the meaning.

Mr. Pugh: You mean it emphasises the pressure?

Mr. Baig: It emphasies it.

Mr. Pugh: Now, the word *utarne* (उतरणें) means to come down?

Mr Baig: Where is that word used?

Mr. Pugh: Never mind where that word is.

Mr. Baig: It means, to come down.

Mr. Pugh: Do you not generally say, *varun utarne*, come down from above?

Mr. Baig: We generally say *khali utarla*, it is not necessary to say *varun*; it is not usual to say *varun*.

Mr. Pugh: You told us that *utarne* is to come down.

Mr. Baig: Yes; *utarne* is to come down; *khali utarne* is to come down down.

His Lordship: *Utarne* itself means to come down; is it necessary to say *khali*?

Mr. Baig: *Khali utarla* is idiomatic.

His Lordship: There is repetition in that, because there is already down in *utarne*; you add another 'down.'

Mr. Baig: That is idiomatic.

Mr. Pugh: It is not idiomatic also to add *varun* for 'above.'

His Lordship to Mr. Baig: Can you say *varun utarne*?

Mr. Baig: It is not used usually, but there is nothing grammatically wrong in it.

His Lordship: What would you say, "for came down?"

Mr. Baig: *Khali utarla.*

Mr. Pugh: Then do I understand you to say that you would not use the words *varun utarne*?

Mr. Baig: I have told you that it is simpler to say *khali utarla*.

Mr. Pugh: I do not ask you what is simpler.

Mr. Baig: The word *varun* adds something to it.

Mr. Pugh: Is it not usual to say, speaking of a man coming downstairs, *varun utarla*?

Mr. Baig: It is not necessary. I have never heard the word *khali* with *varun*.

Mr. Pugh: Have you ever heard it used?

Mr. Baig: I have answered the question, I believe.

His Lordship: Have you heard the words used?

Mr. Baig: Yes.

Mr. Pugh: Have you heard the words *varun khali utarne*, used?

Mr. Baig: There is nothing wrong in that.

Mr. Pugh: Is that quite usual?

Mr. Baig: It is not so common as the other expression without *varun*.

Mr. Pugh, handing Mr. Baig a copy of Æsop's Fables, which he said was a standard Government Book, referred to a passage where the words *varun khali koni utroo naye*, (nobody should come down from above), occurred.

Mr. Pugh: Does that mean downstairs?

Mr. Baig: I think so.

His Lordship: What is the book?

Mr. Pugh: Æsop's Fables, my Lord.

His Lordship: How is the word used here?

Mr. Baig: *Varun khali utroo naye*, which means nobody should come down from above.

His Lordship: It is a passage about coming downstairs.

Mr. Baig: I have not read the whole of the story.

Mr. Pugh: Glance over the story and tell me whether it refers to coming downstairs.—*A.* There is nothing about a story there. It may be coming down from a loft. (Laughter.)

Q. You would have to use stairs. Were you not acquainted with the book at school?—*A.* Yes, certainly.

Q. Now the word *dadapat asel*; that is a participle. What is the meaning of the word *dadapat*?—*A. Dadapat asne* is to press down.

Q. Do you agree with this, that it means to compress a substance under the weight of some other substance?—*A.* Yes.

Q. What is the first meaning?—*A.* The first meaning is press down.

Q. Listen to me now; the first meaning is to compress a substance under the weight of some other substance, namely, by reducing one of the substances to a lower position and exalting one at the expense of the other. That is to say, to exalt oneself at the expense of others. Do you agree with that?—*A.* Yes.

Mr. Pugh: Then I put in the translation, my Lord. (*Exhibit No.* 29.)

His Lordship: It is used in the figurative sense.

Mr. Pugh: Yes.

His Lordship: What is this you put in, Mr. Pugh?

Mr. Pugh: It is a translation. I put in this now and get a certified copy to-morrow.

His Lordship: Very well.

Mr. Pugh: One other word I would like to ask Mr. Baig: it is about *swatantrya*; *swa* means one's own and *tantra* * means control?—*A*. Yes, that is so.

His Lordship: I think it is liberty.

Mr. Pugh: Mr. Baig admits that *swa* means own and *tantrya* means control. It is used for instances in describing the position of women and children when they are under the control of their male relations.—*A*. I have not heard you.

Q. Are women *swatantra* or not?—*A*. If it is used in a sentence I will understand it better.

Q. You are putting too much upon me in regard to these sentences.—*A*. If a woman is under the control of her husband or her husband's brother, you speak of *swatantra*. *Taba* is the word I should use.

Q. If you are speaking of a woman, whether she is under her own control or under the control of her husband or her husband's relations, can you not use the word *swatantra*?—*A*. We have the word *swatantrya* here.

Mr. Pugh: You have told us that *swa* means own and *tantra* is control. Can you say it with regard to the women?

Mr. Baig: Half the word or the whole word?

Mr. Pugh: Either.

Mr. Baig: Unless you give it to me in a sentence I cannot say anything.

His Lordship: Suppose you were talking of one person having control over another, would you use the word *tantra*?

Mr. Baig: I have not heard it; I would not use it.

Mr. Pugh: You are pressing me for an instance: supposing I give you one—"there is no liberty to women," how would you express it, would you not use the word *swatantra*?

Mr. Baig: Yes, I would use the word *swatantra*, for instance: Women have not got *swatantrya*.

Mr. Pugh: That would mean that they are under the control of their husbands' relations.

Mr. Baig: Yes.

Mr. Pugh: You translate *swatantra* as liberty.

Mr. Baig: That is High Court translation.

Mr. Pugh: Never mind the translation. Let us talk about the scholarship. (Laughter.) You would speak of Mills' Essay on Liberty as *swatantrya*.

Mr. Baig: Never heard of it.

Mr. Pugh: You cannot translate that as *swatantrya*.

Mr. Baig: No; *swatantrya* is "free"; it is an adjective.

His Lordship: You would not translate the word "free" there.

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* The reference occurs in Prof. Banu's speech: "We are all striving to regain (our) lost independence. *Nashta swatantrya* (नष्ट स्वातंत्र्य) lost independence, in the freetranslation.

Mr. Baig: The word is *swatantrya.*

Mr. Pugh: *Swatantrya* is liberty.

Mr. Baig: Yes.

His Lordship: Would you translate liberty as *swatantrya*?

Mr. Baig: Yes, I do.

Mr. Pugh: Freedom of thought.

Mr. Baig: Yes.

Mr. Pugh: You would use *swatantrya* to explain that.

Mr. Baig: I do not see any objection to that.

Mr. Pugh: Freedom of opinion.

Mr. Baig: I should use *swatantrya.*

Mr. Pugh: Freedom of speech.

Mr. Baig: Yes.

Mr. Pugh: Freedom of discussion.

Mr. Baig: Yes.

Mr. Pugh: Freedom of Press.

Mr. Baig: Yes.

Mr. Pugh: Freedom of will.

Mr. Baig: Yes.

Mr. Pugh: Freedom of action?

Mr. Baig: Yes.

Mr. Pugh: Personal liberty.

Mr. Baig: Yes.

Mr. Pugh: Religious liberty.

Mr. Baig: Yes.

Mr. Baig re-examined by Mr. Lang.

Q. In the several expressions of freedom of speech, freedom of will, &c., *swatantrya* is alone used in all these expressions.—*A.* Not alone; with other words.

Q. Just tell me what is the meaning of (दडपणें) *dadapane* in Molesworth's dictionary?—*A.* Pressing down, to compress, being under subjection, oppress.

His Lordship: The first meaning is to press down.

Mr. Baig: Yes.

Q. The word you were asked about yesterday (छळणें) *chhalanen*, what is the meaning of that word?—*A.* Persecute; harass.

Q. Is that the meaning in the dictionary?—*A.* Yes.

Q. That is at page 4, my Lord.—*A.* This is Candy's Dictionary, English into Marathi. The first word is (सतावणें) *satavane*, the second word is (छळणें) *chhalane* for other words.

Mr. Pugh: He takes the English into Mahratti Dictionary to get his meaning, my Lord. He does not try to get the English equivalent of the Mahratt words.

Mr. Baig: It means harassing.

Mr. Pugh: He first takes "persecutes" and goes to give the Mahratti meaning. (Laughter.) This word *chhalane* is what Major Candy gives as the second word under "persecution."

Mr. Baig: Yes.

His Lordship: You say that any expression, freedom of speech, freedom of opinion, all these mean *swatantrya.* But when the expression is used by itself, how would you translate it?

Mr. Baig: Liberty.

His Lordship: Liberty or independence?

Mr. Baig: Yes.

His Lordship: Independence means political independence, does it not?

Mr. Baig: *Swatantrya* also has that significance but not necessarily; it depends upon the context.

His Lordship: How do you translate *dada*?

Mr. Baig: In the verse in question *dada* is to get redress of grievances. It is from the Persian word *dada*, meaning complaint or lamentation, but when it is used with the word *lavne*, Molesworth gives it as redress of grievances.

His Lordship: You translate it as redress of grievances.

Mr. Baig: Yes.

Q. Would it carry any suggestion as to the way in which the grievances are to be redressed?—*A.* Not necessarily.

Q. But you said just now something about complaint. How does that apply?—*A.* If it is used by itself.

Q. What does *dada* by itself mean?—*A.* It means complaint, lamentations. *Dada lavne* is to redress grievances.

Q. It is complaint or lamentation by itself, but when used with the word *lavne* it means redress of grievances.—*A.* Yes.

Q. What is *lavne*?—*A.* By itself it means to apply. It has other meanings. Here *dada lavne* is to redress grievances.

Q. Would the word *lavne* here mean apply?—*A.* Yes, if you take the two together.

Q. Redress of grievances by applying something.—*A.* Not necessarily.

Q. In this connection.—*A.* To apply or make application.

Q. Just look at this sentence in this article at page 8. Observe that the official translation is "Get it redressed."—*A.* Yes, I see it.

Q. Now look at the original and tell me this: "Can that sentence be fairly construed as meaning get that redressed, by means of representation or petition or complaint, or whatever you like to call it." Does it suggest the idea of force by arms or something of that kind? The original does not necessarily convey that idea, does it?—*A.* There is another word which is used in that sense *dada magne.* But here it is put in the way it is translated.

Q. Does it bring out the whole sense? That is that a man is to get redress by representation to higher authority as distinct from redress by force.—*A.* It does not suggest the former idea to my mind.

Q. You do not think it could possibly mean a representation to higher authorities?—*A.* Not necessarily.

Q. Not necessarily but ordinarily and fairly.—*A.* If *magne* was used with *dada*, then there would be no doubt.

Q. Take it as it is; what do you take it to mean?—*A.* I should like to take it to mean to redress grievances by force of arms or to take the law in one's own hands.

Q. I take it that you mean by one's own efforts, not by representation to higher authorities?—*A.* Yes.

Q. Suppose it was by representation to higher authorities, what words would you expect to find here?—*A.* *Dada magun ghya.*

Q. You say *lavne* means apply.—*A.* Yes, in the sense of apply color to the wall.

Q. Apply one thing to another. *A.* Yes.

Mr. Pugh: Would your Lordship permit me to ask the witness two questions?

His Lordship: I have not finished with him yet. It is five o'clock now, and we shall adjourn till to-morrow. I have got some more questions to put to him.

The Court adjourned till Friday 11 A. M.

Friday, 10th September 1897.

3rd DAY'S PROCEEDINGS.

When the Court sat on Friday and the jury and prisoners had answered their names, Mr. Pugh rose to make a protest. He said:—

"Before proceeding further in the case, my Lord, it is with very great regret that I have to call your attention to the issue of the *Times of India* of to-day to which my attention has been directed. Your Lordship will see that in this issue there is more than half a column of comment on yesterday's proceedings, comment which I think your Lordship would consider ought not to have been made. I will only refer to one passage which has evidently been directed to the jury. It runs as follows: 'It was not easy for the lay mind to quite grasp the connection of the correspondence in the *Times of India* and the charge of exciting disaffection to Government as by law established in British India.' I will not read any more. The lay mind means, of course, the jury; it is a long passage and extends over half a column; and the only object, as far as we can see, is to prejudice the minds of the jury and the mind of your Lordship, if that were possible, in reference to this case. I need hardly point out to your Lordship that it is laid down in 'Fulcard on Libel' that the principle underlying committal of editors for contempt of court was that the comments made were such as to interfere with the administration of justice. At page 674 he says: 'There can be no greater offence against public justice than to so apply the means at the disposal

of the public newspapers as to interfere with the proceedings by comments thereon.' Again at page 676 the same thing is said (*reads*). There are, my Lord, many instances in which rules have been issued against journals under similar circumstances. In the *Bangobasi* case, to which the Advocate-General has referred, a native editor, while that case was being heard before the Chief Justice of Bengal, commented upon it, and a rule was issued against him and he was brought before the Chief Justice when he promised not to repeat the offence, expressed his regret and was allowed to go. My client in this case has not the time and would find it somewhat difficult in the present circumstances to incur the expense of moving the court upon this subject, and I am not at all sure it is possible for him to take that form of proceeding. I therefore appeal to your Lordship for the protection of my client; and I trust that your Lordship will take such measures as will not render it necessary for me to make further complaints against articles published in the newspapers in regard to this trial."

His Lordship: I have not read the article to which Mr. Pugh refers, and do not know what it says, but I gather that it is a sort of descriptive article, the object of which was to describe yesterday's proceedings, and in the course of that article the statement is made that certain article is put in by Mr. Pugh for the defence of which it is difficult to see the bearing. Is that it, Mr. Pugh?

Mr. Pugh: It says it is difficult for the "lay mind" to see the bearing of this particular evidence or for the judge either.

His Lordship: That is the effect of it.

Mr. Pugh: Yes, my Lord.

His Lordship: I have not read the article to which Mr. Pugh refers, and do not know what it says, but I gather that the object of the article was to give a sort of description or picture of the proceedings in court. It is perfectly true that newspapers must be extremely careful whilst proceedings are going on to avoid anything at all which may be taken to be a comment on the case. Anything to prejudice the minds of the jury, by any expression of opinion adverse either to the prosecution or the defence, ought to be carefully avoided. In giving a descriptive account there is danger of going beyond that line and passing from mere description and giving a colored account which leans to one side or the other. Not having seen the article referred to, I cannot say if this gets beyond the line or not, but I think it is right to mention about the matter to which Mr. Pugh has referred that great care ought to be taken to avoid anything which may be taken as comments on the evidence at all. The jury have to make up their minds on the evidence without being disturbed by anything whatever outside. I express no opinion on the article at all, not having read it, but that is the principle which ought to be observed. There is nothing to prevent newspapers giving a descriptive account, but they should be extremely careful ie giving a summary to avoid anything that may look like a suggestion that a certain piece of evidence is of no value at all. That is all I think it necessary to say.

To the jury: I am sure that you who read the newspapers will exclud from your minds all that you see in them and be guided exclusively in your views by the evidence which is put before you, and that outside comment would not have any bearing on your minds.

Mr. Mirza Ali Baig was called and further examined:—

Mr. Pugh: Before your Lordship proceeds with the business of the day, I intend to ask witness (Mr. Baig) further questions. It is with regard to another piece of translation. It is a portion of *Exhibit* **B 2.** *

His Lordship: You wish to put other passages before the Jury?

Mr. Pugh: It is in reference to the translation about God not granting *Mlenchhas* a copper-plate of the kingdom of Hindustan.

His Lordship: Very well.

Mr. Pugh (to Mr. Baig): Just look at this translation. Is it correct?—*A.* It is not correct.

His Lordship to witness: It is an official translation! You say it is not correct?

Mr. Baig: It is not correct in material points.

Mr. Pugh: In what respect is it not correct?—*A.* The tense of the verb (दिलेले नाहीं *dilele nahi*) is a present perfect tense. It means "has given," and not "did give."

Q. *Nahi* is an adverb?—*A.* *Nahi* means "not;" it is exactly as in English.

Q. I do not ask you of English or Welsh, or any other language. I am talking of Marathi, and I want to know if *nahi* is not an adverb.—*A.* Yes, it is.

Q. *Dilele* is a participle?—*A.* It is present perfect tense of the verb *dene*, to give.

Q. Is it a participle or not?—*A.* I have answered the question. It is present perfect tense of *dene.*

Q. I am not asking that. I want to know whether it is not a participle.—*A.* I have, I think, correctly answered your question.

His Lordship (to witness): Surely you can answer the question.—*A.* No, it is not a participle.

Mr. Pugh: Does not *dilele* in the context mean 'given' or 'granted.' Don't you think that it is a participle?—*A.* No, not in this sentence; in another sentence it may mean that.

Mr. Pugh: I want to get literal meaning first, then I will deal with the context; *dilele* by itself is *given*?—*A.* Yes.

Q. Just as you say in Hindustani *diya nahi,* not given.—*A.* It does not correspond with the Hindustani expression.

His Lordship: By itself it means "given"?—*A.* Yes, *dene* is an infinitive.

Mr. Pugh: *Dene* is an infinitive and *dilele* is a participle. Why do you say there, that in connection with the context it does not mean "did give."—*A.* Because "did give" will be *dile nahi* and not *dilele nahi.*

His Lordship: The fact of *le* being added to *dile* means "has given?"

Mr. Baig: Yes.

Mr. Pugh: What do you say of this translation, "God did grant copper plate, &c?"—*A.* I would object to "did grant" there.

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* It is put in later on as *Exhibit No.* **30.**—K. G. D.

His Lordship: You say the second translation is wrong?—*A.* Yes.

Mr. Pugh: Having regard to the context, I suppose you will take what is mmediately preceding, and what is immediately following, the sentence?—*A.* Yes.

Mr. Pugh: What is immediately following is "The Maharaja strove to drive them away from the land of his birth, &c."—*A.* Can I see those words in the paper?

Q. Can't you follow me sufficiently?—*A.* I follow you in English.

His Lordship: You want to see the Marathi words?—*A.* I want to see the Marathi. [The witness was given the original in Marathi, and he was following it, as Mr. Pugh was cross-examining him about the tenses.—K. G. D.]

Mr. Pugh: You are satisfied with regard to that sentence that it is in the past tense. Will you kindly answer me without looking at this paper? I read to you the words "The Maharaja strove to drive, &c."—*A.* I follow the English there.

Q. It is in the past tense?—*A.* Strove is in the past tense.

Q. "He did not thereby commit the sin, &c."—*A.* "Did not" is in the past tense.

Mr. Pugh: Take the line "Shivaji Maharaj did nothing, &c."—*A.* That is also in the past tense.

Mr. Pugh: "Murdered Afzulkhan?"—*A.* Murdered is in the past tense.

His Lordship: I want to know if the second accused wants to put any question to the witness?

The 2nd accused: I have no question to ask, my Lord.

Re-examined by the Advocate-General.

"If thieves enter our house, &c." What is the tense in that?—*A.* It is in the present tense.

Q. Is the translation "God has not conferred, &c." correct?—*A.* It is correctly translated.

Q. Give me your reason.—*A.* The tense of the verb regulates the sense of the sentence.

Q. If it was "did not give," what would be the original?—*A.* *Dile nahi.*

Q. If it was "had not given"?—*A.* *Dile navhate.*

His Lordship (to Mr. Pugh): You put in your translation?

Mr. Pugh: As soon as it will be certified. It is put in, subject to its being certified as *Exhibit No.* 30.

The Advocate-General (to the witness): Look at the *Kesari* of the 22nd June. "No one had conferred upon the Mussalmans the *sanad* to rule, &c."

Mr. Baig: Yes.

Q. See what words are there.—*Mussalmanas koni rajya karnyachi sanad dil navhati.*

Q. Is that correctly translated?—*A.* "Had not given" is the correct translation of *dili navhati.*

The Advocate-General: I shall better put in that article. (*Exhibit* E.)

Mr. Pugh: My client is very anxious, if your Lordship pleases to allow him, to ask witness questions with regard to the grammatical construction of that sentence.

His Lordship: Can't he put the questions through you, Mr. Pugh?

Mr. Pugh: The questions are of a technical character.

His Lordship: If you cannot understand the questions, it is very difficult for me to understand or for the Jury to understand them.

Mr. Pugh: It is as regards the words in grammar.

His Lordship: Put them in a way that it is intelligible to the jury and myself; if the question is to be put it must be put by you.

Mr. Pugh (handing the witness a copy of a grammar): Just look at that, do you recognise that as a grammar? It is a grammar of the Marathi language—an old one, but headed a "new one."

Mr. Baig: I have not seen it.

His Lordship: Mr. Pugh, I shall settle the matter this way. I shall ask the accused at the time of his making his statement to give his own explanation. Will that suit your purpose?

Mr. Pugh: It will suit my client's also.

His Lordship: Now, then, Mr. Baig, look at page 7 of the literal and free translation together. You see the word *Gora*?—*A.* Yes.

Q. It is translated as 'white men.' Does it necessarily mean Europeans?—*A.* Yes.

Q. Does it necessarily refer to any class?—*A.* It means Europeans generally.

Q. Does it apply to the Mahomedans?—*A.* I never heard it applied to the Mahomedans.

Q. Now look at the words meaning "I delivered the country by establishing *swarajya.*" How would you translate the word *swarajya*?—*A.* In two ways; it would mean "my own rule" or it is applied to the country governed by Shivaji.

Q. Can it mean "country"?—*A.* That tract of the presidency which was subject to Shivaji. It would be his own rule.

Q. Now look at the passage about "pressing down."—*A.* Yes.

Q. "Cut him off." What are the words for "cut him off"?—A. *Chhatun kadha.*

Q. What does it mean?—*A.* Cut him off, slay, destroy or kill.

Q. Does it mean cutting off in any particular sense, or does it simply mean "boycott," an English expression?—*A.* I do not think it is "boycotting;" it means cut him off, slay, destroy.

Q. You say it means kill?—*A.* Yes.

Q. It does not necessarily mean "kill," does it?—*A.* If it is taken with the context it may mean "kill".

Q. Take the word by itself; can that mean "cut him off" in a perfectly innocent sense, separate or any thing or that kind?—*A.* It depends on the context.

Q. But according to the context that word may be used in an innocent way or in any other way?—*A.* Yes.

Q. It may be used in such a way as to mean "separate" or "boycotting?"—*A.* That would depend upon the context. It is used in ten differen senses. Molesworth gives the meanings.

Q. Just look at the context and tell me why you say that in this context it means to "kill"?—*A.* For this reason. The words '*dadpat asel*' are used; and then the two words *varun* and *khali* would indicate some agency pressing down a sufferer from above; and that agency is to be got rid of; the person oppressed is to save his life and liberate himself. So the words *chhatun kadha* could only mean "cut him off or destroy him." I think the sentence is put in a most emphatic way. *Dadapane* is a very strong word to use. It means "pressing down" so as to give the feeling of suffocation or distress.

His Lordship: Then it means 'destroy' or 'kill' for the reasons you just gave; that is how you read it. I want to know—is that necessarily the meaning it would convey to any other reader? Might it not mean that the oppresor should be removed or does it necessarily mean "kill," or is it ambiguous?

Mr. Baig: I do not think it is ambiguous.

His Lordship: Any reasonable person can read it in that sense?—*A.* As a matter of fact all the Mahratti scholars have read that in that sense.

His Lordship: I do not want any thing about the Mahratti scholars. Just say whether it is used in any other sense?—*A.* My own opinion is that it is capable of that interpretation only in this context.

His Lordship: Look at the two lines just before the passage about the "copperplate." Look at the original. "Shrimat Krishna's advice (teaching) in the Gita is to kill even our teachers and our kinsmen." (*See Exhibit* C.)

Mr. Baig: Yes.

His Lordship: Look at the next sentence "No blame attaches" (to any person) if (he) is doing deeds without being actuated by a desire to reap the fruits (of his deeds.)"

Mr. Baig: Yes.

His Lordship: "Any person," is it correct?—*A.* Yes.

Q. It is correctly translated.—*A.* "No blame attaches to any body" is correct.

Mr. Pugh: There is another matter arising out of the cross-examination and for which I asked your Lordship's leave last night to ask the witness some questions about *swatantrya.*

Cross-examines witness.

Q. Political independence would be translated by *Rajkiya-swatantraya*?—*A.* *Swatantraya.*

Q. Would not *Rajkiya swatantraya* mean "political independence"? —*A.* It is national independence.

Q. What is *rajkiya*?—*A.* *Rajya* is kingdom.

Q. *Rajya* is kingdom or Government?—*A.* *Raja* is king and *rajya* is kingdom.

Q. It is government by a king?—*A.* *Rajya* is kingdom and *rajakiya* is an adjective qualifying in your sentence "independence" or *swatantrya.* I would say it is "political independence."

Q. Independence of one's own country would be "*Deshache swatantrya?*" —*A.* Yes, to govern it exclusively.

Q. The proper words would be "of the country"?—*A.* Yes.

His Lordship: *Swatantrya* by itself without this *rajakiya* or *deshache* would mean "independence?"—*A.* The word means political independence.

His Lordship: If it is with *deshache?*—*A.* Then it is quite clear.

Re-examined by Mr. Lang.

Q. What does *swa* mean?—*A.* One's own.

Q. *Tantra?*—*A.* Dependence.

Q. (Referring to Molesworth) *Swatantra* means independent, uncontrollable; free; absolute?—*A.* Yes, it is correct.

This concludes Mr. Baig's examinition.

Mr. Lang: I put in, my Lord, the document that has been annexed to the application in the Police Court. It is a certified copy of the declaration made by the defendant (*Exhibit* **F**.) (He reads the declaration). (*Exhibit* **F**.)

His Lordship: What is the date?

Lang: It is dated 27th October 1887 (*Exhibit* **F**) (regarding the *Kesari*).

The declaration of the *Mahratta* is dated 3rd September 1891. (Reads). It is a declaration made before Mr. Plunkett. I put in, my Lord, the article of the *Kesari* of 14th June 1892. (Referring to the shooting incident.) (*Exhibit* **H**.)

His Lordship asked for its translation and it was handed up.

Mr. Lang read the translations (*Exhibit* **H**).

His Lordship: The other article, is it in the *Kesari*?

Mr. Lang: It is in the *Kesari* of 2nd October 1894 and refers to the imprisonment of the Brahmans at Wai. (*Reads Exhibit* **I**.)

The next article I put in is in the *Kesari* of 6th April 1897 (*Exhibit* **J**). The Jury have got it printed. It is the correspondence signed by "Dasanudas." I won't read it again. The next is an article in the *Kesari* of the 4th May 1897 about *Shri Rama Jayanti* and *Shri Shiva Jayanti*. It has already been handed to the Jury.

His Lordship: Is it the one headed "*Shri Rama Jayanti?*

The Advocate-General: Yes, my Lord. I will put in another article in the same paper, column 5, page 2, and column 1, page 3, it begins with "There is no doubt," &c; and refers to the plague operations.

His Lordship: Yes.

Mr. Lang: It has been read to the Jury. I will not read that (*Exhibit* L). I put in the *Mahratta* of 23rd May 1897 headed "Free Thoughts;" the first two paragraphs in the paper that has also been handed to the Jury and read (*Exhibit* M). Then the *Mahratta* of the 30th May 1897, the first two paragraphs under the heading "Free Thoughts." This has also been read to the Jury (*Exhibit* N). The next one is on page 4; it is an editorial on the "Arms Act of Baroda" (*Exhibit* O), and on page 5, an article headed "Indian Princes in London" (*Exhibit* P).

Second Witness examined.

The next witness called was Dattatraya Damodhar.

The Advocate-General: Your name is Dattatraya Damodhar?—*A.* Yes.

Q. You are a clerk in the office of the Commissioner of Police?—*A.* Yes.

Q. You are a subscriber to the *Kesari*?—*A.* Yes.

Q. How do you receive it?—*A.* It is sent to me generally by the agent in Bombay; but during the plague it was sent to me by post.

Q. Is this the copy of the 15th June 1897 which you received?—*A.* It is.

Q. Does it bear the Poona Post-mark?—*A.* Yes.

His Lordship: Does it bear the Bombay Post-mark also?

The Advocate-General: Yes, my Lord, it bears both.

Q. Does it bear the Poona and Bombay Post-marks?—*A.* Yes.

Q. Is this the receipt (*produced*) you received for your subscription?—*A.* Yes, that is the receipt I received for my subscription.

Q. It is from the Agent of the paper in Bombay?—*A.* Yes, from the agent here. I paid it to the messenger of the Agent, who signed that receipt.

The Advocate-General: I put that receipt in, my Lord. (*See Exhibit* Q.)

Mr. Pugh: I have no questions to ask, my Lord.

The second accused was asked if he had any questions to ask the witness and intimated that he had none.

Examination of the Third Witness.

Narayen Mahadev Puranik was next put in the witness-box and was examined through the Court interpreter.

The Advocate-General: Do you live in Poona?—*A.* Yes.

Q. Are you employed as a clerk in the Arya Bhushana Press at Poona?—*A.* Yes.

Q. How long have you been employed in that press?—*A.* For about 6 or 7 years.

Q. Who is the owner of the press?—*A.* Harri Narayen Gokhale.

Q. Was he in Poona in June last?—*A.* No.

Q. And who was managing the press in his absence?—*A.* Keshav Mahadev Bal.

Q. The second accused?—*A.* Yes.

Q. When did he commence to manage the press?—*A.* Since Gokhale's departure.

Q. When was Gokhale's departure?—*A.* Gokhale went away 8 or 9 months ago.

Q. What Marathi or Indian month did he leave in?—*A.* I think it was the month of *Paush* or *Magh.*

Q. Is the *Kesari* printed and published at that press?—*A.* Yes.

Q. And the *Mahratta* also?—*A.* Yes.

Q. Has the *Kesari* been printed there as long as you have known it?—*A.* Yes.

Q. How long has the *Mahratta* been printed there?—*A.* Before my time it was printed and published in this press.

Q. It has been ever since?—*A.* Yes.

Q. Who is the owner of the *Mahratta*?—*A.* Bal Gangadhar Tilak.

Q. He is also the owner of the *Kesari*?—*A.* Yes.

Q. Is this one of the books of the press (*produced a book*)?—*A.* Yes.

Q. Does this show the distribution of the copies of the *Kesari* of the 15th June, 1897?—*A.* Yes.

The Advocate-General: I put this in, my Lord; this is the translation. (*Exhibit* R.)

His Lordship: The whole book?

The Advocate-General: No, my Lord, the page that is only recording the distribution of copies of the *Kesari* of the 15th June, 1897. It shows that 6,789 (six thousand seven hundred and eighty-nine) copies were printed.

His Lordship: Yes, I see the second column on page 866 refers to copies sent to places in Poona. I see 631 sent by post to Bombay. The 536 were sent to Bombay to subscribers individually by post. The 631 were sent to the Agent in Bombay in a parcel.

Q. Tell me whose signature is this on this declaration (*shows him the declaration*)?—*A.* The signature K. M. Bal is of the second accused.

His Lordship: Have you got it printed?

The Advocate-General: No, my Lord, it is not printed.

His Lordship: The jury will not understand it. I presume it is some declaration made to the Postal authorities at Poona.

The Advocate-General: It is merely the declaration to the Post Office for privileged Postal rules. (*Puts it in. Exhibit* S.)

The Advocate-General shows witness a book.

Q. What book is this?—*A.* It is the Cash-book of the *Kesari* and the *Mahratta* kept at the Press.

The Advocate-General: The translation outside is "*Kesari* and *Mahratta*" Cash-book, and the credit and debit entries are at the same page.

His Lordship: What is the date of the Cash-book.

Advocate-General : It is headed "*Kesari* and *Mahratta* Cash Book for Mr. Tilak, commencing on the 1st January 1897." The sales are debited to the Arya Bhushana Press account and the expenses written on the other side.

The Advocate-General: Look at it. Is it signed by the second accused?—*A.* Yes.

The Advocate-General: I put that in, my Lord. (*Exhibit* **T.**) He then shows a post-card to witness. Is this a post-card to the West End Watch Company?—*A.* Yes.

Q. Is it also signed by the accused?—*A.* Yes.

His Lordship: A post-card, dated 27th June 1897, and signed by the 2nd accused.

The Advocate-General: Yes, my Lord. (*Exhibit* **U.**) (Shows witness another letter.)

Q. Is this also signed by the 2nd accused?—*A.* Yes.

The Advocate-General: I put this in, my lord. (*Exhibit* **V.**) It is a letter, dated 14th July 1897, sent to the West End Watch Company and signed by the 2nd accused. (Shows witness another letter.)

Q. Is this also signed by the 2nd accused?—*A.* Yes.

The Advocate-General: I tender this, my Lord. (*Exhibit* **W.**) It is a letter dated 11th June 1897, to the Century Publishing Co., and signed by the 2nd accused.

Q. And this one? (Shows him another letter.)—*A.* Yes.

The Advocate-General: This is a letter, dated 18th June 1897, to the Century Publishing Co., and signed by the accused. All these are business letters. (Puts it in, *Exhibit* **X.**)

Q. Look at that bill. Is that signed by the second accused?—*A.* Yes.

The Advocate-General: I tender the bill for inserting an advertisement sent to the Resident Engineer, B. B. & C. I. Railway, dated 19th June 1897. (*Exhibit* **Y.**)

Cross-Examined for the Defence.

Mr. Pugh: What part of the country are you a native of?—*A.* Of Poona.

Q. Do you mean that you were born and bred there?—*A.* No! I was not born in Poona.

Q. Just tell me was it in the district of Poona that you were born?—*A.* I was born in the Zillah of Satara in the village of Tasgaon.

Q. At what age did you go to Poona?—*A.* I was a child about 5 or 6 months old when I was taken to Poona.

Q. Where were you educated, in Poona?—*A.* Partly in Poona and partly at Chinchwad, a place near Poona.

Q. Now, Marathi is your language?—*A.* Marathi is my own language, and I do know Marathi, but I cannot say very well.

Q. And Sanskrit, do you know that?—*A.* Yes, somewhat.

Q. Are you what is termed a *Shastri*?—*A.* In the Press I was called by the name of *Shastri Bawa.*

Q. What does Bawa mean.—*A.* It is a respectful term applied to *Shastris.*

Q. *Shastri* means a Sanskrit Scholar?—*A.* That is so; but it generally means people who know a little of Sanskrit. They are addressed as *Shastris.*

Q. Do you know a little English?—*A.* Yes.

Q. Tell us this: are there divisions among the Hindus of Poona or not?—*A.* There are.

Q. How many great parties are there?—*A.* Two.

Q. One I suppose we may take it to be the Orthodox party and the other the Reform party?—Yes.

Q. Can you tell me shortly what the chief differences are?—*A.* The Orthodox party acts according to what is laid down in the *Shástrás.* The Reform party tries to bring into practice things which are prohibited by the *Shastras.*

Q. Now to which does Bal Gangadhar Tilak, the first accused, belong?—*A.* As far as I know he belongs to the Orthodox party.

Q. He is a graduate of the Bombay University.—*A.* Yes.

Q. And a Bachelor in Arts and Law? (*Witness hesitates.*)

Q. I mean he is a B.A., LL.B.?—*A.* Yes.

Q. He is also a Fellow of the Bombay University?—*A.* Yes.

Q. Probably you know that he has since been returned to the Bombay Legislative Council?—*A.* Yes.

Q. Now, do you know Professor Bhanu?—*A.* I have seen him.

Q. What party does he belong to?—*A.* He belongs to the Reform party.

Q. Do you know whether he has published a translation of Mr. Spencer's "Justice?"—*A.* I know that he has translated some book of Mr. Spencer's.

Q. Is this the book?—*A.* Yes.

Q. Have you read that book?—*A.* No, I have not.

Q. Just look at the title and contents of it. Do you see the word *Swátantrya* (स्वातंत्र्य) there? Look at Chapter IX., "*Sháririk Swátantrya.*" Is that what you see? *A.*—Yes.

Mr. Pugh: I have here the English of Mr. Spencer's "Justice." Chapter IX. is on Physical Integrity. Now look at Chapter X., "*Gamana Swatantrya.*" It refers to Motion and to Commotion (*reads from book*).—*A.* Yes.

Q. Now look at Chapter XIV., "*Dána Swátantrya,*" that is, Right of Gifts and Bequests?—*A.* Yes.

Q. And Chapter XV., "*Vinimaya* and *Karára Swátantrya,*" that is, the Right of Free Exchange and Free Contract.

His Lordship to the Interpreter: Is that used at page 10?

Interpeter: Yes, my Lord, the word *Swátantrya* is used in all these headings.

Q. Chapter XVI., there is "*Swàtantrya*," that is, Right of Free Industry ?—*A.* Yes.

Q. At Chapter XVII., "*Mata Swátantrya* and *Dharma Swatantrya*," that is, Right of Free Belief and Worship ?—*A.* Yes.

Q. And Chapter XVIII., "*Wak Swátantrya* and *Mudran Swátantrya*," Right of Free Speech and Publication.

Mr. Pugh : Just look at this book and tell me what it is.—*A.* It is the *Bálbodha*.

Q. Do you know it ?—*A.* Yes.

Q. Do you know who it is written by ?—[Witness tries to recall name.]

Q. Was he a Government servant ?—*A.* I now remember his name ; it is Vinayek Kondev Oke ; he was in Government Service.

Q. Was he a Deputy Educational Inspector ?—*A.* Yes.

Q. Is this book taught in the Government Schools ?—*A.* Yes.

Q. What is the meaning of *Bálbodha*, the name of the book ? You can tell me, Mr. Interpreter.

Interpeter : It is "Advice to Children."

Q. Now, do you see page 20 of that book ?—*A.* Yes, I see page 20.

Q. Do you see there the lesson "Is India Getting Richer or Poorer ?"—*A.* Yes.

Q. And on page 29 do you see another lesson entitled "Shivaji's Utterances ?"—*A.* Yes.

Mr. Pugh : I tender these two extracts, my Lord. I have had them translated by the Court Translator. (Put in extract from pp. 20-22—"Is India Getting Richer or Poorer," *Exhibit* **31** ; "Utterances of Shivaji Maharaj from Heaven," at pp. 29-30, *Exhibit* **32**.)

Mr. Pugh then read the last articles, and before commencing the reading of the 2nd article he said : These are the "Utterances of Shivaji Maharaj from Heaven."

The article having been read, Mr. Pugh went on with the witness.

Q. Now, just look at this book of poems taught in Government schools.—*A.* Its name is *Pushpavátika*. In my days this book was taught in Government schools.

Q. You will see from outside who it is written by. [Interpreter : Vinayek Konddev Oke.]

His Lordship : What is the name of the book ?

Interpreter : *Pushpavátika*.

Mr. Pugh : Which means the "Garden of Flowers" ?

Interpreter : It does mean that.

Q. Is that book sold at the Government Central Book Depôt at Bombay ?—*A.* Yes.

Mr. Pugh : It is in the catalogue, my Lord.

Q. Now, just turn to pages 14 and 15, you will see an article headed "*Patriotism.*"

Interpreter: *Swadéshábhimán.*

Mr. Pugh: This, my Lord, I have had translated; I have not been able to get it yet. Perhaps the Interpreter can follow me.

Mr. Pugh then read the verses on "Patriotism" and then tendered it "Ex. 33" and also the catalogue as Ex. 34.

His Lordship: You will get them certified, Mr. Pugh?

Mr. Pugh: Yes, my Lord. I put in the book and the catalogue, my Lord.

Mr. Pugh to Interpreter: You followed that, and you admit I gave a correct translation?

Interpreter: I have not had an opportunity of examining it. I have heard it read, and it appears to me to be correct.

His Lordship: Where is this Government Book Depôt?

Mr. Pugh: It is at Kalbadevi Road,* Bombay, and is a Government Book Depôt.

His Lordship: Is this book published under the authority of Government?

Mr. Pugh: So I understand, my Lord, and taught in Government schools and sold under the authority of Government. It is written by a Deputy Educational Inspector.

Mr. Pugh then referred to an extract from the *Hitôpadésh*, which is edited and translated by Prof. Max Müller.

Q. Do you see this book?—*A.* Yes. It is the *Hitôpadesh.*

Q. An old Sanskrit work?—*A.* Yes.

Q. Do you see at page 85, verse 64, titled *Asantushta?*—*A.* Yes.

Mr. Pugh: Please read it, Mr. Interpreter.

The Interpreter having read the verse in the original Sanskrit, Mr. Pugh asked the Interpreter to write the Sanskrit text in Roman characters and remarked to the Judge:

We have first the Sanskrit and then the English translation under it.

I think I can give the translation while the Interpreter is taking the original down in Roman character.

His Lordship to Interpreter: Is it correctly transliterated?

The Interpreter: I think I am right, but I have not compared it.

His Lordship: Is this book included in Max Müller's series of Sacred Books of the East?

The Advocate-General: I think so, my Lord.

Mr. Pugh: I am told, my Lord, that it is not included in the Sacred Books of the East, but is well known; I am told also, my Lord, that it is a text-book for the Civil Service Examination.

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*It is a slight error. The Depôt is at Girgaum Back Road.

His Lordship: I would like to know something about these two books; they are school books, I understand. Do they profess to be orginal articles or selections?

Mr. Pugh: I understand them to be original, but I cannot be certain. I have no official translation of it, but perhaps the Interpreter will probably be able to tell us that.

His Lordship: Do you know this book, the *Bálbodha*?

Interpreter: I know the book.

His Lordship: Does it profess to be a school book?

Interpreter: It is a monthly periodical intended for advising little children. This is the 7th part and contains twelve issues.

Mr. Pugh: Can you say whether they purport to be original or not? Or are the old articles put together?

Interpreter: It is a book containing contributions written either by one or several individuals, and this book is part 7 containing twelve issues.

His Lordship: Volume for one year?

Interpreter: Yes, for 1887-88.

His Lordship: Who purports to be the editor of it?

Interpreter: Mr. Vinayek Konddev Oke.

His Lordship: "Advice for Children." Is that the meaning of the title?

Interpreter: Yes, the heading Balbodha means "Advice to Children."

His Lordship: It is specially written for young children or for students?

Interpreter: It is intended for children and written in a simple style.

Mr. Pugh: The series contains lives of eminent men like Mr. Justice Ranade. I am not sure whether it is in this volume.

His Lordship: Is there anything on it to show that it is used in Government schools?

Interpreter: In the book itself there is nothing.

Mr. Pugh: Do you know if the book is used in Government schools?

Interpreter: I do not know whether it is taught in Government schools.

Mr. Pugh: Do you know the book yourself?

Interpreter: Yes, I am a subscriber.

His Lordship: Is there anything in it to show that it is sold in the Government Book Depôt?

The Advocate-General: No, my Lord, there is nothing. It is a book published in 1874, and from the catalogue we see it was sold at the Depôt.*

His Lordship: Where was it published?

Interpreter: In the Nirnayasagar Press.

His Lordship: I suppose the only connection between the Government and this book is that the witness has said that it is taught in Government schools and written by a Deputy Educational Inspector. (To the Interpreter.)

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* There is a confusion. The Advocate-General is referring to the *Pushpavatika* and not to *Balbodha*.

This *Pushpavatika* was published by Mr. Vinayek Konddev Oke in 1874?

Interpreter: Yes, my lord.

His Lordship: Does it purport to be sold at the Government Central Book Depôt?

Interpreter: It shows that it is printed at the Education Society's Press, Byculla.

His Lordship: Witness said it was sold at the Government Central Book Depôt.

The Advocate-General: It is catalogued in the collection of the Government Book Depôt.

His Lordship: Then it practically comes to this; the only connection with the Government is that it is one of the many books sold at that place.

Mr. Pugh: And taught in Government schools, my Lord.

His Lordship: The witness says that in his days it was taught in schools.

His Lordship: Who was Mr. Venayek Konddev Oke; do you know anything about him?

Interpreter: I believe he was in the Educational Department, and was pensioned 2 or 3 years ago.

Mr. Pugh: Do you know this book?

Interpreter: It is the 5th Marathi Reading Book.

Mr. Pugh: Am I right that *santosh* is the substantive and *santushta* is the adjective. (Mr. Pugh is referring here to the verse in the *Hitôpadesha*.)

Interpreter: Yes, that is so.

Mr. Pugh: It means satiety?

Interpreter: And also contentment.

His Lordship: What is the meaning of *asantôsh*?

Interpreter: Discontent.

Mr. Pugh: *Asantôsh* means discontent or non-satiety and is the opposite of *santosh* contentment, satiety.

His Lordship to Interpreter: What is the meaning of *santushta*?

Interpreter: Satisfied or contented.

His Lordship: What is the meaning of *asantushta*?

Interpreter: Dissatisfied or discontented.

His Lordship: Let me see the translation of that passage in Max Müller's Book.

Mr. Pugh: Your Lordship will find it at page 85, line 64. (Put in as Ex. 35.)

Mr. Pugh to Interpreter: Now, just turn to page 312 of this book.

His Lordship: What is the book?

Interpreter: It is called Marathi 5th Book. It is a book for Marathi Schools, Standard 5, compiled by Major T. Candy, late Marathi Translator.

Q. It is one of the Government series?—*A.* Yes. Published in 1896.

Q. It is a para. headed "Shivaji?"—*A.* Yes.

Mr. Pugh then having read a translation of the article asked the Interpreter: Is that substantially correct? *A.* Yes.

His Lordship: You will put in the regular translation.

Mr. Pugh: Yes, my Lord. (Ex. 36.)

His Lordship: Does the second accused wish to ask any questions?

Second accused to witness: Was I not a paid servant in the Arya Bhushana Press?—*A.* Yes, you were a paid servant in the Press.

Q. Was it my duty to examine the proofs of the *Kesari*?—*A.* No, it was not your duty; there was another man to do that work.

Mr. Pugh: I wish, my Lord, to say that those books I referred to are put in as exhibits.

His Lordship: They will be so marked.

The Advocate-General to witness: Do I understand you to say that this book the *Balbodha* is taught in Government schools?—*A.* No, I do not know whether this book is taught in Government schools.

Q. You have never seen it taught in a Government school?—*A.* No.

Q. Now with regard to *Pushpavatika*, do you say that that book is taught in Government schools?—*A.* I don't know whether this book is taught in Government schools or not, but I know that copies of this book were presented to deserving students who had passed their examinations.

Q. Where was the book presented to a successful student?

Mr. Pugh: I object to that question, my Lord, my learned friend is cross-examining his own witness.

The Advocate-General: I want to know by whom it was given. I think I am justified in putting the question.

His Lordship: I allow the Advocate-General to put the question.

Q. Where was the book presented?—*A.* I got one myself when I was a student, as a present in a Marathi School.

Q. In what Marathi School?—*A.* At Chinchwad.

Q. What school was it?—*A.* It was a Government school.

Q. Who gave it to you?—*A.* The Examiner. I got it from the Examiner.

Examination of Witness by his Lordship.

His Lordship: You say that it was not the duty of the second accused to examine proofs of the *Kesari*?—*A.* Yes.

Q. Whose duty was it?—*A.* The duty of the reader.

Q. Who was that?—*A.* Gunesh Balvant Tarte.

Q. Do you know if he submitted the proofs to any one?—*A.* No.

Q. Do you mean that you don't know?—*A.* I don't know what he did with the proofs. He used to examine them and after that, to whom he submitted them I do not know.

Q. Had you anything to do with the proofs?—*A.* No, I had nothing to do with them.

Q. What were you?—*A.* I used to write up the account book.

Q. Anything else?—*A.* I used to write up the account books, receive subscriptions and give receipts.

Q. You have nothing to do with the printing of the paper?—*A.* No, my Lord.

Q. And I suppose you did not know what the course of business was with regard to the printing?—*A.* I shall not be able to say anything about that.

Q. Can you tell me who was the printer?—*A.* Keshav Mahadev Bal. The person who made the declaration was Gokhale; in his absence Bal attended to the printing.

Q. Who attended to the printing on 15th June last?—*A.* Bal, the 2nd accused.

Witness asked permission to leave Bombay, and both counsel agreeing that he would not again be required, it was granted.

The fourth Witness examined.

The next witness examined was Balwant Krishna Kolangde, head compositor of the *Kesari*.

The Advocate-General: Your name is Balwant Krishna Kolangde?—*A.* Yes.

Q. You are the head Marathi compositor in the Arya Bhushana Press at Poona.—*A.* Yes.

Q. How long have you been employed there?—*A.* 16 years.

Q. Is the *Kesari* printed there?—*A.* Yes.

Q. And the *Mahratta*?—*A.* Yes.

Q. Is it your duty to set up in type the manuscript intended for the *Kesari* and *Mahratta*?—*A.* No, the compositors do that. I superintend them.

Q. From whom do you get the manuscript of the matter to be printed in the *Kesari* and *Mahratta*?—*A.* We apply to the managers, that is persons responsible for the management of the press and they give it to us.

Q. Do you know where they get them from?—*A.* From Tilak.

Q. When the proofs are printed, what is done with them?—*A.* When the proofs have been corrected by the compositors, I place them on the desk of the corrector.

Q. What then?—*A.* After they are read the proofs are returned to me, and I cause the corrections to be made accordingly.

Q. After that?—*A.* Fresh proofs are taken when the corrections are made.

Q. And then?—*A.* I then hand the fresh proofs over to the managers.

Q. And what is done with them then?—*A.* The proofs go to Tilak.

His Lordship: From the managers?—Witness: Yes.

Q. Does he send them back approved or otherwise?—*A.* Yes.

Q. After this the paper is printed?—*A.* No, then another proof is submitted to the corrector.

Q. Is one submitted to Tilak afterwards?—*A.* No.

Q. Then the paper is printed after that?—*A*. Yes.

Q. Before it is printed, do the proofs go to Tilak's house?—*A*. Yes.

Q. Has that always been the practice?—*A*. When I say proofs I do not mean proofs of the forms but column proofs.

Q. How many years have you been in the press?—*A*. Sixteen years.

Q. Has the *Kesari* been printed there during those sixteen years?—*A*. Yes.

Q. Have you anything to do with the printing of the *Mahratta?*—*A*. No.

Q. Now, we have heard that Gokhale is the registered printer of the *Kesari*, when did he leave?—*A*. It was during, or, after October.

Q. You mean about October?—*A*. About October.

At this stage the Court rose for tiffin.

On resumption at 2-45 P. M., examination of witness was continued.

The Advocate-General: You said Gokhale left in October last; has he been away ever since?—*A*. I believe he returned ten or twelve days ago.

Q. Only recently?—*A*. Yes.

Q. Who was looking after the Printing Press during his absence?—*A*. Keshav Mahadev Bal, the second accused.

Q. You said that the proofs were given to the managers, and that they sent them to Tilak. To whom did the manuscripts go?—*A*. To Keshav Mahadev Bal, who worked as manager.

Q. Was he the person you meant when you said you gave proofs to the manager?—*A*. Yes, Keshav Mahadev Bal, from whom I got the manuscripts and to whom I gave them back.

Cross-Examination of Witness.

Mr. Pugh: Do you remember whether the first accused, Bal Gangadhar Tilak, was in Poona during the whole of May and June?—*A*. I remember that he was not in Poona.

Q. When did he go away from Poona?—*A*. I believe he left on the 4th or 5th of May.

Q. When did he return?—*A*. I believe during the month of June, or after June was over.

Q. You do not remember the date?—*A*. I do not.

His Lordship: Does the second accused wish to put any question?

Second Accused: Was it my duty to examine proofs for the *Kesari*?—*A*. No.

Re-examined.

Q. Whose duty was it?—*A*. The corrector's.

Foreman of the Jury: We would like to know what is the pay of the second accused.

Witness: I do not know what was his pay.

His Lordship: Was the second accused Bal, the manager on the 15th June 1897?—*A.* He was.

Q. Was he head-printer?—*A.* He was.

Fifth Witness examined.

The Advocate-General: Your name is James Adolphus Guider?—*A.* Yes.

Q. You are Assistant Superintendent of Police, Poona?—*A.* I am.

Q. In pursuance of search warrant issued by the Chief Presidency Magistrate you searched the Aryan-Bhushan Press?—*A.* I did.

Q. On the 28th July 1897, did you not?—*A.* Yes; and on a subsequent date, that is, the 30th July 1897.

Q. You found there the books which have been produced in the Court?—*A.* I did.

Cross-examined.

Q. Did you make any search after the 30th July 1897?—*A.* No, not after.

Second accused did not cross-examine.

Sixth Witness.

The Advocate-General: Your name is Janardhan Krishna Purohit?—*A.* Yes.

Q. Are you a clerk in the Poona Post Office?—*A.* Yes.

Q. Is this declaration (Exhibit **S.**) made in respect of the *Kesari* newspaper in order to obtain privileged rates of postage?—*A.* Yes.

Q. For the quarter ending 30th June 1897?—*A.* Yes.

Cross-Examination

Mr. Pugh: How long have you been in Poona?—*A.* For about 15 years.

Q. During that time have you known [the first accused, Tilak?—*A.* I have known him for five, or seven years.

Q. There are, I believe, two parties among the Hindus in Poona?—*A.* Yes.

Q. Tilak is, I understand, the head of the orthodox party; who are the leaders of the other party?—*A.* Professor Bhanu, Professor Gokhale, (that is, the gentleman who had gone to England), Dr. Bhandarkar and others.

Q. Are the Hindu papers divided in the same way there?—*A.* Yes; they are divided.

Q. I suppose they attack each other's party?—*A.* Yes.

Q. Were you in Poona during the time of the plague?—*A.* I was.

Q. Had you any opportunity of knowing at that time what Tilak was doing?—*A.* Yes, I had.

Q. What was the occasion?—*A.* My wife was ill of plague, and I had to go to the Hindu hospital.

Q. Had Tilak anything to do with that?—*A.* I came to know that the hospital was started through his exertions.

Q. Do you know whether there was any separate Hindu kitchen in the segregation camp?—*A.* Yes.

Q. By whose exertions was that arrangement made ?—*A.* Tilak's.

Q. Did many of the leading men leave Poona at this time of the plague?—*A.* Yes, most of them had left Poona,—Hindus, I mean.

Q. Do you know what line Tilak took with regard to the plague?—*A.* I know that Tilak was telling people that what Government was doing was proper, and that they should not make any obstruction, or raise any obstacles against what Government was doing.

Q. Regarding all those leading people who left at that time, what did he say ?—*A.* Tilak was saying that they did not act properly in leaving Poona.

The Second Accused examines the Witness.

Bal: Will you look at the declaration put in and say whether I have signed it as "Manager" or "For Manager"?—*A.* "For Manager."

Re-Examination of Witness by the Advocate-General.

Q. You say your wife was in this Hindu plague hospital?—*A.* Yes.

Q. Was it a charitable hospital, or did you pay to get your wife in?—*A.* I had to pay Rs. 15.

Q. As entrance fee, or per month?—*A.* Rs. 10 was entrance fee, and Rs. 5 was on account of daily allowance at the rate of Re. 1 per day.

Q. If a patient was there more than five days, had he to pay the same?—*A.* I should have been charged at the rate of Re. 1 per day, for the number of days that my wife stayed there. I had to pay Rs. 15 in advance. I had to pay Re. 1 more, when my wife died there.

Q. What Hindus were admitted into the hospital?—*A.* All Hindus.

Q. Shudras and twice-born as well?—*A.* Yes; there was a Shudra patient as well.

Q. Had the patient to pay?—*A.* I do not know. I had to pay.

Q. This separate kitchen at the segregation camp, for whom was it?—*A.* For all Hindus, and food sometimes used to be supplied from this kitchen to Mahomedans.

Examination of the Seventh Witness.

Q. Is your name Vishnu Jaganath Datar?—*A.* Yes.

Q. Do you live in Kandewady ?—*A.* Yes.

Q. Have you been managing the agency of the *Kesari* in Bombay ?—*A.* Yes.

Q. How long have you been the agent?—*A.* For several years.

Q. The copies of the *Kesari* come to you on Tuesday evening ?—*A.* Yes.

Q. For distribution to the subscribers in Bombay ?—*A.* Yes.

Q. And, except during the plague time, how was the paper sent down?—*A.* By railway parcel.

Q. It is distributed by you to the subscribers in Bombay.—*A.* Yes.

Q. During the plague time how did the *Kesari* come?—*A.* By post.

Q. By post direct to the subscribers?—*A.* Yes.

Q. That was the practice to the end of June?—*A.* To the end of June.

Mr. Pugh declined to cross-examine witness. The second accused, on being asked, said he had no question to put.

The Advocate-General: These are all the witnesses for the prosecution, my Lord. I now put in the statements made before the Magistrate by the accused Tilak and Bal:—

Examination of B. G. Tilak, 2nd August 1897.

The Examination of Bal Gangadhar Tilak taken before me, J. Sanders Slater, Esquire, Chief Presidency Magistrate for the Town of Bombay, on Monday, the 2nd day of August 1897, charged before me, the said Presidency Magistrate, with exciting or attempting to excite feelings of disaffection to the Government established by law in British Ind ia.

The accused is cautioned that whatever he now says will be taken down in writing, and will be given in evidence at his trial, and the following questions are put to him:—

Q. Do you wish to make any statement here, in reference to the alleged offence with which you now stand charged on the Information and Depositions on oath and solemn Affirmation of complainant and witnesses, which you have heard taken, read, and interpreted?—*A.* Yes.

Q. State what you wish to say.—*A.* I am the publisher and proprietor of the *Kesari*, and it is published in Bombay and other places. I repudiate the charges and the insinuations contained in the information. I reserve anything further that I have to say. I make the above admission as to being publisher and proprietor, &c., to avoid waste of public time.

(Signed.) BAL GANGADHUR TILAK.

I certify that this examination was taken in my presence and in my hearing, and contains a full and true account of the statement made by the accused.

(Signed.) J. SANDERS SLATER.

Mr. Tilak's Grammatical Explanation.

His Lordship: I am going to ask the accused Tilak—he wanted to explain some expressions.

Mr. Pugh: Some grammatical questions regarding the meaning of the word *dilele*.

His Lordship: Show me where that word is.

Mr. Pugh: Exhibit C, my Lord, last page. The page is not the same in my book. The first line is "If thieves enter our house."

His Lordship: It is in the literal and the free translations.

Mr. Pugh: No, my Lord, it is a seperate translation.

His Lordship: You put in the same translation just now?

Mr. Pugh: I shall have it certified.

His Lordship (to Mr. Tilak): I understand you want to give an explanation regarding this passage that is translated officially as "God has not conferred upon the *Mlenchhas* the grant inscribed upon a copper-plate." What is your explanation ?

Mr. Tilak: I have to offer an explanation regarding the tense of the verb used there. The sentence reads thus: *Mlenchhána Hindustánchya rajyáchén támrapat parméshwaráne dilélé náhin.*

Mlenchhána is the accusative of *Mlenchha.*

Hindustánchya is the adjectival form in the genitive case.

Rajyáche is in the genitive case.

Támrapat is the nominative of *náhi.*

Parméshwaráne is in the instrumental case and connected with the causal of *dilélén.*

Dilélén is the past participle from *dene.*

Náhi is a negative copula; a negative verb.

His Lordship: Is that all?

Mr. Tilak: The verb *náhi* has no past tense in Marathi.

His Lordship: *Náhi* is not a verb at all.

Mr. Tilak: *Nahi* is not an adverb; it is a verb.

His Lordship: How do you translate it?

Mr. Tilak: *Náhi* means is not. It is a combined verb of *na* and *áhe*, and I would translate the sentence as "it is not a fact that the *tamrapat* was given to the *Mlenchhás* by God."

His Lordship: The word *náhin* means "not."

Mr. Tilak: *Náhi* means "is not." The verb *náhin* has no past tense in Marathi; and it is used with the present participle, past participle, and future participle, to denote the three tenses, namely, the present, past, and the future, the tense being denoted by the participle and *náhin* simply denies its existence.

His Lordship: You mean that *náhi* simply means—nay—standing by itself.

Mr. Tilak: It does not convey any sense of time. The sense of time is conveyed by the participle. If your Lordship wants any authorities I have got them here (Marathi Grammar). (See *Exhibits* **37** and **38**—K. G. D.)

His Lordship: I simply wish to hear whatever you have to say by way of explanation.

Mr. Tilak: In the same case, for instance, the three forms would be (देतनाहीं) *déta náhin* (present).

His Lordship: Translate that in English.

Mr. Tilak: Is giving not, *déta* (देत) being the present participle; second form would be *dilé náhi* or *dilélé náhi*, it is the past of that; *dilé* or *dilélé* means given; *náhi* means is not; therefore, the whole will mean "given, is not."

His Lordship: *Dilé náhi* or *dilélén náhi* – *dilé* is the same as *dilélé* ?

Mr. Tilak: Yes. It is a participle either with the single *lé* or double *lé*; the third form would be the future tense, *denár náhi.*

His Lordship: Translate it.

Mr. Tilak: Will not give; all the three expressions are collectively used in Marathi if we want to emphatically say "I did not give," "I do not give," and "I will not give."

His Lordship: Suppose you want to use the past tense, what would you say?

Mr. Tilak: *Dilé náhi* or *dilélé náhi.*

His Lordship: Suppose you want to say "I have not given."

Mr. Tilak: The form used would be the same.

His Lordship: *Dilé náhi* or *dilélé náhi* may either mean "I have not given" or "I did not give." You say it may mean either.

Mr. Tilak: There is no negative present perfect form in Marathi. "I have not given" would be expressed by the same thing.

His Lordship: "I have not given" and "I did not give," either expression is possible in Marathi?

Mr. Tilak: That all depends on the context. In Marathi Grammar we have the present perfect, positive form, but no negative form for the present perfect.

His Lordship: I do not want to cross-examine you, or put you any question. I want you to explain to me the way in which you can express the meaning of "has not given"; you say it depends on the context?

Mr. Tilak: It has been suggested that this would mean *dilélé návaté.*

Mr. Pugh: Please, your Lordship, he has not heard your Lordship's question.

His Lordship: I shall try to make him hear me. I want to ask you this (to Mr. Tilak). It is said that the proper translation is "God has not conferred." I want you to point out to me anything which would show that this translation is not correct and that it would be "God did not give."

Mr. Tilak: Just the sentence above this which has been translated; here the form used is the same.

Mr. Pugh: (*Reads that sentence*) "Shivaji Maharaja *did nothing.*"

Mr. Tilak: The form used there is the same as this; grammatically the form used there is the same; there we have the words *kélén náhin* (did nothing), and in the present sentence the words are *dilélé náhi.*

His Lordship: The first is *kélén náhin.*

Mr. Tilak: In Marathi the past participle form is used with the addition of a single *lé* or double *lé.* The form used there is *kélén náhin.* I could have said there *kélélén náhin* as well. In the next sentence "Maharaja strove to drive away," also this is in the past tense.

His Lordship: This is also the same, I believe.

Mr. Tilak: It is the past tense; and *them* refers to the Mussalmans in the previous sentence; that shows that it, (the sentence in question), is in the past tense according to the Marathi construction. In the next sentence I refer to the very Mussalmans that have been referred to in the previous sentence.* The statement has been made about things at that time. I wish to make a statement about the word *swátantrya.*

His Lordship: That is all you want to say about that sentence about the *Mlénchhas*?

Mr. Tilak: If your Lordship wants I can give authorities.

His Lordship: I do not want any authorities; if you want to give any authorities, give them.

Mr. Tilak: My authorities are, the Grammar of Marathi language published by Krishna Shastri Godbole.

His Lordship: Is that in English or Marathi?

Mr. Tilak: In Marathi; it is a 2nd edition published in 1874, page 118 article 323 (see *Exhibit* **38**). I will only give you authorities from two or three standard grammars.

His Lordship: I cannot read them.

Mr. Tilak: This was used by the Education Department.

His Lordship: The passage that you want to draw my attention to let the Interpreter read. It is of no use to give me reference in Marathi books, showing me the same meaning as is shown by your authorities. I cannot allow any authority unless it is translated by the High Court Translator.

Mr. Tilak: The next authority is the Grammar of the Marathi language, by Dadoba Pandurang, 8th Edition, published in 1885, at pages 170-71, art. 475, and also at page 39. (See *Exhibit* **399**.) I will give one proof more from the Standard Marathi Grammar by Ramchandra Bhicajee Joshi, published in 1895, pp. 165-66. (See *Exhibit* **39**.)

His Lordship: Mr. Pugh, you will have these authorities translated tomorrow?

Pugh: Yes, my Lord.

Mr. Tilak: *Svátantrya* is derived from *sva* and *tantra*, with the addition of the abstract noun termination. We find it in Sanskrit used for the purpose of denoting freedom of action or, freedom generally. My authority is *Manu*, Ch. IX., verse 3, and *Yájnavalkya*, Ch. I., verse 85. All these texts are translated. It is used with reference to children to denote the termination of *patria potestas* or paternal control. It is so used in the Marathi book called Balmitra, Vol. I., p. 46. It is translated.

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* The three sentences are, (1) "Shri Shivaji Maharaj did nothing to fill the small void of his stomach." (2) "God has not conferred upon the *Mlénchhás*, &c." Mr. Tilak's construction is—It is not a fact that God conferred on the *Mlénchhás*, &c. The sentence immediately following the last sentence is (3) "The Maharraj strove to drive them away from the land of his birth." *Them* refers to the *Mlénchhás* in the preceding sentence. Therefore *Mlénchhás* must mean the Mussalmans.—K. G. D.

His Lordship: I do not understand that there is any dispute about the meaning of this word, Mr. Pugh?

Mr. Pugh: I do not think, my Lord.

His Lordship: What is the meaning of *Varun* to be gathered from the text?

Mr. Tilak: *Varun khali dadpat asnet* means, to exalt oneself at the expense of another. It does not apply to physical pressure. *Varunkali* simply means, down. Similarly about *Chhátun Kádha*. *Chhátun Kádha* is probably rendered by *cut-off*, but is never used in the sense *of killing*.

His Lordship: What does it mean?

Mr. Tilak: It means cut, *kápané*.

His Lordship: This expression is never used in the sense of killing?

Mr. Tilak: Never used in the sense of killing.

His Lordship: How do you explain the expression. If it does not mean killing, what does it mean?

Mr. Tilak: Set aside, let severely alone. Candy's Dictionary is my authority. Candy says killing is *kátné*.

His Lordship: What is the Marathi word used in his Dictionary?

Mr. Tilak: Kill means *kattal karné* or *kátné*. Now for the expression *varun khâli*; it simply means "down" in Marathi. It is a colloquial phrase. I refer to pp. 94 and 177 of Marathi IV. Book (Government Publication) and Major Candy's Series, and p. 116 of Æsop's Fables in Marathi. This is the meaning that I understood of the phrase in Professor Bhanu's speech at the time I presided at the Shivaji celebration, and so I stated in my own speech in conclusion. (Mr. Tilak here read the English translation of the concluding part of the report of his speech in *Kesari* of 15th June 1897.)

His Lordship: There is nothing about pressing down?

Mr. Tilak: There is nothing about killing. I referred to the social bickerings in social matters. It means *set aside.* I want to say something about the word *dád láwne* in the verses, line 40, page 141, of the brief. The very word *Dad* excludes the idea of force. *Dád* means representation of injury and *lávún ghya* is the causal form of lawful *láwne*. *Dád* is something like relief in English, *e. g.*, a Plaintiff prays for relief. I confidently say that there is no passage in the Marathi language where it is used in the sense to denote force or to convey the idea of force. *Dád mágné* and *lávún ghéné* are different expressions. *Dád mágné* means to go personally. *Lávún ghéné* means to get a representation made by some body. It is the causal form of *lávné*.

His Lordship: You say that it means redress or relief. Do you say it necessarily implies redress by petition or representation?

Mr. Tilak: It always implies that. It excludes the idea of redress by one's own efforts. About the two quotations which appear in Prof. Paranjpe's *Puran* they are the first portions of two verses in the *Mahabharata*: "Discontentment is the root of prosperity, but contentment destroys prosperity." This has been rendered in one sentence here, but it is entirely wrong. In the original they appear in Sanskrit and not in Marathi. The first part is a portion of one verse,

the second part is that of different verse altogether, and both the verses are put in the mouth of Duryôdhana who is speaking with reference to himself. His meaning is that he, (that is, the king) should always be discontented; the people should always be contented, but the king should always be discontented. The same idea is expressed in the Hitôpadésha. If your Lordship asks for further explanations, I shall be glad to give it. That is all I have to say.

His Lordship: Second prisoner, if you have to explain anything that has appeared in the evidence against you, you can explain it now. If you prefer, you can wait till the time I address the Jury.

2nd Accused: I have nothing to say now.

His Lordship: You want to call any witness, Mr. Pugh?

Mr. Pugh: No, my Lord. This is the statement that the second accused desires to put in.

His Lordship: I will read this statement of the second accused.

The second accused: I want to make a statement that I received only Rs. 30 as pay, per month.

His Lordship: (*Reads the statement of the second accused.*)

STATEMENT OF THE SECOND ACCUSED KESHAV MAHADEV BAL.

I admit that at the request of the Manager of the *Arya Bhushana* Press I acted for him at Poona from October 1896 down to the time I was arrested on this charge, and I further admit that as such acting Manager, I had in the course of my duties, to send the proofs of the matter which appeared in the newspapers, the *Kesari* and the *Maratha* to the first accused, Mr. Tilak, or such person as he directed during his absence for correction and examination; but I deny that I presonally read or corrected the said proofs, or that I knew of the contents of the said papers before they were published. I respectfully submit that there is no evidence before this Hon'ble Court of my having known of, or been, in any way, privy to such contents and even assuming that the same or any of them were published with the intents mentioned in section 124-A of the Penal Code (which I entirely deny), I say that it is not the fact that I had any such intent and I respectfully submit to this Hon'ble Court that there is no evidence of any such intent on my part to be laid before the gentlemen of the jury.

I desire to add, with the greatest respect to this Hon'ble Court, that I had retained and instructed and obtained the attendance of Counsel from Calcutta to defend me in this case, but the said Counsel has not been permitted to appear in my defence, and I respectfully submit that this case should have been tried at Poona, and I am advised that had it been so tried, my said Counsel would have been able to appear for me as of right.

With these remarks I humbly submit my case to the consideration of this Hon'ble Court and the gentlemen of the jury.

His Lordship: Mr. Advocate-General, there is one question on which I like to take time to consider. It is with reference to some of these translations; there has been a good deal of dispute about the meaning of some of these words. In a matter of this kind it is extremely difficult for the jury, who are not Marathi, scholars, and for me also, to say what is the proper rendering of these passages. And I think I should consider the matter fully between this and to-morrow whether or not I should myself call a witness who is an expert in Marathi, to give an opinion as to some of these passages.

Mr. Pugh: I have not the slightest objection to that.

Mr. Lang: I leave the matter in your Lordship's hands. I think the jury will be guided by the evidence in the case placed before them. They will have to submit their opinion upon it. Would your Lordship desire that I should not begin my address to the jury before to-morrow morning?

His Lordship: You will take some time about your address. It is half-past four now, and I should like to consider that point further, and in the event of my deciding to call such evidence, I cannot pass an opinion independent of him. I do not say that I am going to do it. I should like to consider if it is desirable and necessary to adopt this course.

The Advocate-General: No doubt, I should like to begin my address without interruption. It would be more convenient if I began after the evidence of the expert is taken.

His Lordship: I shall not commit myself to any proceedings. I should simply like to consider further on this point. It is half-past four o'clock and you would not go on further on this point. We adjourn till 11 o'clock to-morrow (Saturday, 11th instant) morning.

Mr. Pugh: If your Lordship will be pleased to call an expert, we suggest that, as far as possible, he may not be a Mahomedan. Your Lordship will see that the two articles are likely to prejudice him.

His Lordship: If I call a witness, I shall call one whose impartiality will be beyond dispute.

THE PROCEEDINGS OF THE FOURTH DAY WERE COMMENCED AT 11 O'CLOCK, SATURDAY, THE 11TH SEPTEMBER.

On the Court sitting, His Lordship said:—Mr. Advocate-General, I have considered further the matter which I mentioned last night, and I have come to the conclusion that it is unnecesary for me to call any further evidence in the matter regarding the meaning of certain Marathi expressions. I have decided not to call any Marathi scholar in reference to this matter.

Mr. Lang then rose to address the jury:

He said:—May it please your Lordship, and gentlemen of the jury,—As my learned friend, Mr. Pugh, has elected to call no evidence on behalf of the prisoner for whom he appears, and as the second accused has also elected to call none on his behalf, it now becomes my duty, on behalf of the prosecution, to sum up to you the evidence which has been given in this case with regard to the articles and exhibits which have been put in as evidence before you. It might be a relief to your feeling to tell you that I do not intend to read again all the articles and the extracts which have been put in evidence. But I should like to call your attention to various passages in them, and shall do so on the assumption that you have in your minds the contents of the whole of the articles referred to, because in considering this case of course you must not rely merely on isolated passages, but consider the articles as a whole. Gentlemen, before I come to the articles which are the subject of this charge and to the other evidence in this case, I would just call your attention to the position of the second accused, and also refer to the observations which he made in the written statement, which he

put in his defence yesterday. He complained apparently that instead of being tried in Poona he had been tried in Bombay. Gentlemen, in regard to that I do not know whether my learned friend, Mr. Pugh, on behalf of the first defendant, would take the same objection. Of course, the Court in Poona would have had jurisdiction in this case, because this paper, the *Kesari*, is printed and published in Poona, but the Chief Presidency Magistrate of the Court in Bombay also had jurisdiction, because the paper is circulated by the proprietor in Bombay, and this circulation of the paper in Bombay gives jurisdiction to the Magistrate in Bombay, and the Magistrate in Bombay committed them to the Sessions. In electing to proceed with the prosecution in Bombay, instead of at Poona, I think you will be of opinion that we were fully justified in that course. In Bombay, the prisoners, if committed to the Sessions, would be tried by the Special Jury, a jury which, I venture to submit, is the most satisfactory tribunal to try a case of this description, and also I think you will be of opinion that there were circumstances connected with the state of Poona, I hope not now, at any rate a short time ago, which rendered it extremely undesirable that the trial of this description should take place in Poona as the atmosphere in that place was not in such a calm state as in this city. I am justified in saying that the atmosphere of Bombay is considerably calmer than the atmosphere of Poona, and there is every chance of a fairer trial being had in Bombay than at Poona at the present time. Speaking of the position of the second accused, he says, he strongly urges, that he did not, as a matter of fact, see the proofs of the articles at the time they were printed. Gentlemen, I think his Lordship will tell you that this does not affect the case. Because, according to the evidence, he was manager of the press at the time when these articles were printed and was the person who in the eye of the law was responsible for all that issued from the press. The evidence on this point is conclusive. You have had the various extracts with which I would not trouble you, showing that he, during the absence of the man who is the registered printer of the paper, the man is named Gokhale, who left in October, had the management of the press in his hands. Of course his guilt, supposing these articles bear the meaning which we suggest they do, is not so great as the guilt of the person who actually causes them to be inserted in the newspaper. But this is a question with which we have nothing whatever to do. That would be for his Lordship to determine, in considering what punishment should be awarded to him. The fact, therefore, that the second accused is a man on a salary of only Rs. 30 a month does not affect the legal liability in the case. I will not refer more to the second accused.

His Lordship: Mr. Advocate-General, do I understand you to say that supposing it was proved that the jury were satisfied that he was absolutely ignorant of the articles before they were printed in the *Kesari*, do you say that he was guilty under section 124A?

The Advocate-General: I submit, my Lord, he is the man who managed the paper in which these articles are sent forth to the world.

His Lordship: Under section 124A, you mean to say that he excited or attempted to excite feelings of disaffection? Supposing it was shown that although he was the printer and the manager, supposing the jury were satisfied

that he did not know what was in these articles that were put in without his knowledge, can it then be said that he excited or attempted to excite disaffection among the people against the British Government ?

The Advocate-General : I submit that when he allowed articles of this description to go out of his press, articles which he had the opportunity of seeing and which he could have stopped if he liked, then he might be guilty under the section. But I do not wish to labour the point. The case against the second accused is nothing like the case against the first accused. It is not of so great an importance. Now, gentlemen, you have already had read to you the section under which the prisoners are charged , namely, section 124A. I shall, at the risk of repetition, as this is very important matter, ask leave to read to you an account of what the Chief Justice of Bengal has said upon the meaning of this section.

[Reads from the *Bangobasi* case reported in I. L. R. XIX., Calcutta. 477. Reads from Calcutta Law Report, No. 14, *Bangobasi* case.] Now, gentlemen, it is not necessary for the prosecution, in a case of this description, to show that any particular person was disaffected by words which we complain of. It is sufficient for the prosecution to show what the possible or probable effect of such words may be. It is not necessary to show that any attempts in consequence of these words had actually been made to subvert or resist the authority of Government. The Chief Justice in the *Bangobasi* case said a person publishes, words either written or spoken, which are calculated to create in the minds of the persons to whom they are addressed, a disposition not to obey the lawful authority of Government, or to subvert or resist that authority when occasion may arise, and if he does it with the intention of creating such a disposition on the part of his hearers he will be guilty of the charge of exciting disaffection, within the meaning of the section, even though no disturbance or feeling of disaffection was produced.* In other words, to create such disaffection among the persons who had an opportunity of reading these articles as would induce them to see and consider a fitting opportunity to rise to subvert or resist the authority of Government. Gentlemen, you will consider in this case what has been proved before you with regard to the *Kesari* newspaper. The person who is responsible for it is the editor, the publisher, the owner or the proprietor, who is the first accused. We heard it said,—my learned friend has got that out from a witness in cross-examination—by a witness for the prosecution—first of all he is Member of the Legislative Council. He is said to be the leader of the orthodox Brahmins of Poona. He is a B.A., LL.B., of the Bombay University. He is also a fellow of that University. He, therefore, is a person of position in Hindu society and a man who, you may imagine, would have a certain amount of influence. The paper itself, according to the evidence which has been given before you, has a considerable circulation. Of this particular number of the *Kesari*, dated the 15th June 1897, you will remember that the evidence shows that nearly 7,000 copies were distributed and distributed all over the Bombay Presidency.—I daresay there are one or two places outside the Bombay Presidency, but chiefly in the Bombay Presidency,—of which nearly 900 copies were distributed in Bombay.

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* It will be easily noticed by the reader that this interpretation of the section is quite different from the interpretation of Mr. Justice Strachey, and that even the Crown relied on this interpretation in support of their case.—K. G. D.

Therefore, we are not dealing with an insignificant print: we are dealing with a paper owned and edited by a man of position in his community and a paper which has a considerable circulation. It is written in the Mahratti language, it is addressed to the Hindus, or at any rate to all those who understand the Mahratti language, and is intended to be read by them; and, gentlemen, supposing you are of opinion that the prosecution is right in the contention as to the meaning and effect of the articles complained of, then I think you would be fully justified in taking into consideration—you are bound to take into consideration—all that is said by the Chief Justice of Bengal. "Then you will have to consider," says Sir Comer Petheram, "the relations between the Government and the people, and having considered the peculiar position of the Government and the consequence to it of any well-organised disaffection, you will have to decide whether there is an attempt or not to disseminate matter with the intention of exciting the feelings of the people till they become disaffected." Gentlemen, according to the words of Chief Justice Sir Comer Petheram, you must consider in this case the position of the Government, and I would refer you to the words of the defendant himself as to what is the peculiar position of the Government. They occur frequently. I will only refer to one passage He is constantly referring to the word "alien." He is speaking of the Government as a government of foreigners and the people of this country are described, the native inhabitants are at any rate described, as the conquered race. The article to which I particularly refer is the article (*Exhibit* O) in the *Mahratta* of 30th May 1897. That is about the Arms Act in the Baroda State. [Counsel then read the article and coming to the sentence, "The British rulers believe that the subjects, if entrusted with the arms, may one day use them against the Government; the belief is partially well-founded, for the British Government is an alien Government and the subjects in trying to get emancipation will, *if constitutional methods fail*, have some day to resort to arms" said] This is the view the prisoner takes of the British Government. I would just refer to another article wherein he refers to us, the British Government. It is one of the articles which my learned friend has put in, in order to show the loyalty of the first accused. It is in the 3rd of the series of articles upon the Queen's Jubilee. [*Exhibit* 263.] It says: "Unfortunately, we are having daily experience of how the people of any country degenerate when continually pressed under the roller of foreign rule." There the Government is described, I will not say rightly or wrongly, as an alien Government and the people as suffering under the oppression of the foreign ruler. I am justified in asking you to construe this in the language of the Chief Justice of Bengal as "well organised disaffection against the Government." You must remember that the Government which is referred to in section 124 A is the British Government, and it says that any writing calculated to excite disaffection against the Government is aimed at in this section. You will not in this case allow yourselves to be led away as to how far the people of this country may be justified in any attempt to upset British Government. It is not a question which has anything to do in this case. The question for your consideration at present is whether these articles are calculated to excite disaffection of the Government which is at present established by law in British India. Gentlemen, having referred in that way to the position of the Government I will now refer to the particular passages in the Shivaji article. I do not think that anyone can complain of the inhabitants

of the Deccan or any part of India celebrating in a proper manner either the anniversary of the birthday or the anniversary of the coronation of Shivaji. No Government—this Government in particular—will not in the slightest degree interfere with the people who may celebrate or attempt to keep alive the memory of a man who was undoubtedly a great man and who did a great deal for his country. No one in the world would think of objecting to the celebration of this description, but you will see clearly by the evidence in this case and the documents which have been put in, that an attempt is deliberately made chiefly by the first defendant to give a political aspect to these celebrations, and as I shall submit to you, to take advantage of the fact to excite disaffection towards the present rulers. Shivaji, who was referred to in the course of all these articles, was a person who freed his country from foreigners; he drove out the Mahomedans and established Swarajya, the rule of the Hindus, over a large portion of the country. But you must always remember this in considering the allusion to Shivaji in the various articles which are placed before you. Gentlemen, in order to show that the real objects now of the Shivaji celebrations—whatever they were in the beginning—are to excite political feeling in the minds of a certain class of people. I can refer you to the two extracts from the paper which are before you. The first is one which was put in by my learned friend Mr. Pugh on behalf of the 1st Defendant. It is entitled "Hero Worship." It is a very long article. (*Exhibit* 25.) It is in the *Kesari* of the 1st June 1897. I will read a very small portion of it to you. "As Europeans are proud of the inspired speeches (writings) of Dante, Shakespeare, Goethe, and other poets and do not fail to manifest their devotion for them, so (our) love and respect for Kalidas, Bhavabhuti, Moro Pant Tukaram and other great Sanskrit and Marathi poets as heroes have not disappeared from our minds. Not only this, but what is more, we have under this rule got an opportunity of worshipping these heroes in a special manner. Under foreign rule, the political festivals alone had stopped, and that these should stop is but the natural result of foreign rule. Hence, we forgot great heroes like Shri Shivaji Maharaj, and in consequence of hero-worship in matters political getting gradually extinct, we have utterly lost all these things (namely) the political impressions which would have been produced upon our minds, the feelings and emotions which would have predominated in our hearts and the political education which you would have easily received by coming in contact with the high personages (celebrated or renowned) in the history of Maharashtra." Still more pointedly is that referred to in the article of 4th May 1897. (See *Exhibit* K.) This, gentlemen, you will remember I read to you in opening this case. After I had read it, my learned friend Mr. Pugh objected to its going in on the ground that it was merely a letter addressed to the *Kesari* and that the editor of the *Kesari* could not be held responsible for the views of his correspondents. Gentlemen, my learned friend had an opportunity of putting in any other article in the *Kesari* which bore upon this. Any other article expressing disapproval of the matters alleged in it. But I have not been able to gather from any of these that there is the slightest reference made to what is said in this article. Whether it is correspondence or not it is evidently an integral part of the paper. It is a considerably long article upon the festivals of Shri Rama Jayanti and Shri Shiva Jayanti, and it is signed by some one styling himself "Ganesh." But who is this "Ganesh"? This article is a very important one in many

respects. First of all, it begins by referring to the story of the Ramayana. It shows how the Brahmins were being persecuted. The whole article refers to the constant complaint which is made in present times with regard to the British Government, that the Government is persecuting the Brahmins. Certain Brahmins of Wai refused to obey the order of Government and were prosecuted and afterwards imprisoned. This is held up to the people of India as oppressing the Brahmins. The article also referred to the fact that the kine were slaughtered. The paper takes care to inform the public that the tyrant who is oppressing the Brahmins and is slaughtering the kine lived in a small island; the reference is obvious. Ceylon is likened to the British Isles. This tyrant having oppressed the Brahmins, the story goes that Rama, with the assistance of Maruti and aided by monkeys, turned Ravan out. Then it goes on to show how Shivaji followed the example of Rama, and then we come to this passage: "It is therefore my wish to see that all Hindus shall at the time of the Shiva Jayanti think over and cogitate upon the doings, the courage, the firm resolve, and the ingenuity of Shivaji, and instead of supplicating the authorities for protection lay all their complaints before God and lovingly implore him and perseveringly ask him again to create among us a Shivaji similar to this." The whole object of this article is to show the advantages of the celebrations and what people should do when they are celebrating them. Then it goes on to say "will our young men instead of doing this imitate during their lifetime most of the things recorded in the life of Shivaji and in the Ramayana?" A Shivaji must come out to establish Swarajya in India replacing those who are oppressing the Brahmins and slaughtering the kine. That, gentlemen, can only be the meaning of that article. I say, gentlemen, that the article is published on the 4th May 1897, in this paper, and you will be perfectly justified in taking that into consideration in considering the intention with which the articles, the subject of this charge were written. That this particular article has reference to the present time, there can be no doubt, because in it the writer says: "Will the remembrance of the following things, *viz.*, the present famine, the arrangments made regarding it, the deaths brought on by the politicality of Government, the epidemic of fever, the oppressive measures resorted to for its abatement and effects produced by them be kept alive by meditating upon them?" There is little dispute about that article, that it shows what the objects of these Shivaji celebrations now are. I have, gentlemen, called your attention to this article. I now call your attention again to the two articles which are the subject of the present charge. With regard to that, you will have to consider the various attempts that have been made on behalf of the Defendant to alter the translation which has been submitted to the Court and which has been prepared by the translator of the Court who is not a Mahomedan but a Hindu. Mr. Baig is only a witness; he is not the person who translated them. Another person has made the translation. Mr. Baig is in no way responsible for them. The translation is made by the sworn translator of the High Court. The particular gentleman who translated these articles is an official translator, and is a Hindu. My learned friend is perfectly justified in cross-examining Mr. Baig on his accurate knowledge of the Marathi language and upon the construction of the words with which these articles are translated. I do not complain of that; but in dealing with this case I would just remind

you that it was perfectly open for the defence to call before you a gentleman versed in the Mahratti language to show in this translation any word which has been wrongly translated. No such witness has been called by the defence, and therefore the only evidence which you have before you will be the evidence of these articles themselves, as translated by Mr. Mânker, the Court translator, the evidence of Mr. Baig and the evidence of the dictionaries, the extracts from which have been put in. Of course, gentlemen, in a case of this description it would be impossible to decide upon the disputed translations of a particular word. I do not care very much which particular translation you will take out of the translations that have been submitted to you. In considering this case, you must look at the articles as a whole. You will not merely take one or two particular words in them, but take the whole article together and see what is the intention of that article, taken as a whole. But, I think, you will conclude that these words, the translations of which are objected to, are really not of very much importance in this case, for I shall submit to you it is perfectly evident that Mr. Baig's rendering of it and the rendering of it by the official translator is correct. Gentlemen, you will remember, the first of the articles referred to in that charge is headed the "Utterances of Shivaji." It is to this effect: Shivaji is awakened from sleep; he looks down and sees the condition of the people, saying that he had delivered his country and established his own rule and saved his religion. He then refers to the present condition of the country. First of all, "wealth is dragged away by foreigners," as it has been translated. "Foreigners are dragging out Laxmi violently by the hand by means of persecution." What they object to is the word persecution, which is a free rendering. That is the way in which it is translated by the official translator. Mr. Baig said that it is the proper meaning. I do not, however, think that upon that particular point it is very important whether the word persecution is the correct translation or not. The literal meaning of the word is "violently, teasingly, harassingly," words which convey almost precisely the same sense. When you look at it the same meaning will present itself to your mind. The suggestion is that under the British Government the wealth is being, by harassing or persecution, drawn out of the country. Gentlemen, my learned friend has put in a certain article in a book called *Bal Bodha*—"Is India getting richer or poorer." (See *Exhibit* 31). I do not say and I think no one can for a moment object to the discussion of the subject as to whether India is getting richer or poorer. No one can object to a discussion of that kind, but I would ask you to consider whether the reference to these utterances of Shivaji could be construed in the slightest degree in the same light as is the article which has been put in, in this case or any other article on a similar subject which may have been published in India or elsewhere. There is no attempt to discuss here,—there is no attempt to show—that this statement in this article is true. But, first of all, the reference to the ruin of his country and one of the ways in which the country is being ruined is by its wealth being taken away by foreigners by persecution or teasingly or harrassingly. Gentlemen, having called attention to the fact that the people are starving, he refers to those splendid soldiers of his, those soldiers who, no doubt, did great things in his time; who, instead of carrying arms, are engaged in the peaceful occupation of agriculturists, and who do not get enough to eat. No doubt, in times

of acute famine like the present, they find it very difficult indeed to have enough to eat. Gentlemen, that is put forward as a reason in this article for discontent against the British Government. The next thing referred to is that religion is oppressed. That was put forward as a reason for discontent towards the Government, and the article then went on to say, "O people! how did you tolerate in the Kshetra the incarceration of those good preceptors, those religious teachers of mine, the Brahmans." This is reference to the fact that certain Brahmans of Wai were imprisoned. Gentlemen, I need hardly remind you how utterly untrue it is to say that the Government interfere with religion in this way. What really happened was that certain Brahmins at certain places disobeyed the orders of the Magistrate with regard to the playing of music in passing a mosque. In consequence of disobeying those orders they were punished. Of course under the British rule there is not the slightest difference made between Brahmins and anybody else. All of us, Brahmins and all, are obliged to obey the law, but in this particular article the fact that the Brahmins who broke the law were punished like other persons, is put forward as one of the reasons for Shivaji's discontent at the state of his country. Then, gentlemen, the next thing which he refers to in this poem is the fact that white men, in cases between them and the natives, escape without punishment by urging meaningless pleas. I have already referred to the incident which is especially referred to in this paper. I will not trouble you by referring to it again. But with regard to that, if there is the slightest ground for saying that when such incidents occurred the European accused escapes when he is tried for the death of a native or that in this particular case of Mr. Fagan who is referred to here, I think that you will be of opinion that a more unjust and injudicious attack on a man was never made. Here is an unfortunate man who, while out shooting, shot by mistake a woman who was mistaken for a bear. You will recollect that the article in which the writer had said that if what Mr. Fagan did was perfectly by mistake, he could have been punished under the section of the Indian Penal Code which deals with murders by mistake. I need hardly tell you that there is no section which would punish any man for an act of that description. It would be different if a man murdered another man by mistake; then, no doubt, he would be liable for murder. The next thing we come to is "Could any man have dared to cast improper glances on the wife of another," &c. That is to show that under the British Government at the present time women are liable to be insulted. The next point in this article is about the words, "Get that redressed." It is attempted to show on behalf of the defence that "get that redressed" merely meant redress by appealing to the authorities. Now, Mr. Baig says that it is perfectly clear upon this article that it has no innocent meaning, and I think that if you, as men of common sense, read this article, you will see that that construction will not hold water for a moment. They have this significant sentence, that in the times of Shivaji "a thousand swords would have leapt from their scabbards." That does not look like passive redress, and then immediately before the words "get that redressed" the people of this country are stigmatized as eunuchs, because they have endured this sort of thing. Do you think, gentlemen, that the drift of the person who has stigmatized the people as eunuchs is merely to suggest to the persons who read these articles that they are to apply to the proper authorities by representation for the redress of their grievances? Can

you for a moment say that the article bears that construction? And you will also recollect the insinuation in the previous part of the article that justice is not to be obtained in this country. I think you will be of opinion that the rendering that Mr. Baig has given of these words, "get that redressed," is correct. Then we come to the part in which reference is made to the way in which Princes of India are treated, the suggestion being that without just cause they are deprived of their power. That is the suggestion made in this article. The words are: "He is fond of pleasure. Deprive him of his power." Another suggestion is that the kings are so effeminate that they are not able to resist by force the action of the Government. Gentlemen, then we have at the end of the article the words in which he says that Shivaji, if he liked, could have turned out the English, but through his magnanimity he did not do so. Then we come to the passage on which the defence lays much stress: "Make then your subjects, who are my own children, happy." Gentlemen, the question for you is whether writing of this description addressed to the Hindus is not calculated to excite in them feelings of disaffection, dislike and ill-will to the British rule. Do you consider that these words can be construed as merely disapprobation of the measures of Government? The words of the section are these. (*Reads.*) Can any reasonable man say that that article can come under that explanation? I should remind you that even if it were true that every single thing that is said in this article is true, that should be no defence whatever under this section. This is pointed out by Mayne in his work on Criminal Law in India at page 476, section 279. (*Reads*). It often happens that a true description of events is used as a means to create disaffection. Now, gentlemen, I think I am justified in saying that the main object of these articles is to arouse in the minds of those who can read them, feelings of disaffection towards the Government mainly in consequence of two things. These two things are—the way in which their religion is oppressed and the way in which their women are outraged. These are the two things which are prominently brought forward in this article. That is all that I wish to say with regard to that article. I now proceed to the next one. It deals with what is said to have taken place at the Shivaji coronation festival. Now, before I refer in detail to this article, I say, as I said before, that there can be no possible objection to an historical discussion of a particular incident which is referred to by some of the speakers, namely, the killing of Afzul Khan by Shivaji. There can be no possible objection whatever to Professor Bhanu or anybody else coming forward and trying to show that the story told by Grant Duff and other English and Mahomedan historians as to the way in which Shivaji murdered Afzul Khan was incorrect. There can be no possible objection to Professor Bhanu coming forward, lecturing and writing in the papers, trying to show that the views are incorrect, that is, the views put forward by the English historians are incorrect. No one could have the slightest objection to that. If this particular report of this celebration was merely a resumé of Professor Bhanu's lecture on the subject there could be no possible objection to it. Professor Bhanu's lecture at the Deccan College was some time before the Shivaji celebrations. It is perfectly unnecessary for you to consider any remarks which Professor Bain may have made at that lecture. That has nothing whatever to do with

the subject in this case ; and further I say that there can be no objection to anybody coming forward and justifying what Shivaji did even on the assumption that he did treacherously murder Afzul Khan. There is nothing which can bring a man within section 124A if he puts forward the theory that even assuming that Afzul Khan was treacherously murdered by Shivaji yet Shivaji was perfectly justified in doing so. Gentlemen, that is not the question for you to consider. The question for you to consider is this : whether, under the pretext of these Shivaji celebrations, the prisoner has or has not attempted to excite feelings of disaffection towards the British Government, whether the reference in this article is meant to apply to present day Government. Now, gentlemen, I submit that is perfectly clear from the translations of the article as a whole. I will not ask you to take isolated sentences but to take the article as a whole. It begins by a lecture of Professor Paranjpe. I may explain to you what the lecture was about. It was a lecture from the Mahabharata. He took as his text the story of the King Dharmaraja celebrating the Rajasuya, which he compared to the Diamond Jubilee. I think that that comparision is significant. But his cousin Duryodhana felt jealous of the great power and authority of Dharma. And he tells us how ultimately by guile and strategy Duryodhana succeeded in wresting from Dharmaraja his possessions. Then you will refer to the article where it is said "The Puran reader, having compared it, the Rajasuya, to the Diamond Jubilee, commenced the Puran," &c. (See Exhibit C.)

What I suggest as the meaning of this article is that first of all it is a significant reference to the Diamond Jubilee, which was then to be celebrated. The suggestion to his hearers and to those who read the paper is that they should not be contented under the British rule. "Discontentment is the root of prosperity, but contentment destroys prosperity" refers to a man in affluent circumstances who should prefer death to the indignity of being trampled under foot by his enemy. I submit that, having regard to the other passages in this article or even without those other passages, that this is what is really meant by Professor Paranjpe's utterances: The sacrifice is compared with the Jubilee. People are not to be jealous and try to find fault with those who want to overthrow the persons who are celebrating the Diamond Jubilee in the same way that Duryodhana did overthrow the persons who performed the Rajasuya sacrifice. Then we come to Professor Jinsivale, who on this occasion said that the reason why Shivaji is considered to be superior to Cæsar and Napoleon, was that while the great men of Europe were actuated by ambition alone like Dhuryodhana, the uncommon attributes displayed by our Maharaja were not the blaze of the fire of ambition or discontent, but were the outcome of the terrible irritation at the ruin of his country and religion by foreigners. I submit that there can be no doubt as to the meaning of that allusion. Then we come to Professer Bhanu's lecture on the killing of Afzul Khan, in which he refuted the charge of murder which historians had brought against Shivaji. I will not trouble you by going over that. As I said before, Professor Bhanu had a perfect right to refute that charge. Then we come to this passage :—"If Mazzini of Italy dons a mourning dress from his ninth year for the loss of the independence of his country, why should not the Maharajah, even at a tender age, be stirred to put

forth prodigious efforts for protecting the walking and speaking depositories of knowledge and the kine which are the living index of our prosperity? How can English writers have the audacity to belaud Clive and Warren Hastings, who were incomparably inferior to the Maharajah, and whose careers were fraught with foul deeds? Is it not a deliberate outrage to the purity of truth that the pen of the same English writers, whose code of morality refrains from applying the epithet 'rebel' in speaking of Washington, calls Shivaji a 'rebel'? The history of Europe cannot show even a single upright man of Shivaji's type. History will find fault with Shivaji, but from the point of view of ethics his act does not merit censure. How can the European science of ethics, which has 'the greatest good of the greatest number' as its basis (or principal axiom), condemn Shivaji for abandoning a minor duty for the purpose of accomplishing the major one? In the Mahabharata a man of this type is called a *buddha*. The Professor concluded his discourse on the original theme with the declaration that even if the Maharajah had committed five or fifty more faults (? crimes) more terrible than those which historians allege Shivaji committed, he would have been just as ready as at that moment to profoundly prostrate himself a hundred times before the image of the Maharajah. At the conclusion of the lecture, Professor Bhanu said every Hindu, every Mahratta, to whatever party he may belong, must rejoice at this (Shivaji) festival. "We all are striving to regain our lost independence, and this terrible load is to be uplifted by us all in combination." Now, I submit that with regard to that there can be only one meaning.* Our lost independence can only mean, taking into consideration the occasion on which the lecture was given, namely, the celebration of the anniversary of the coronation, driving the foreigners from the land and obtaining independence for Hindustan. I say that the only meaning you can put on that word is liberty or independence from foreign rule. You will see, it is said "to regain our lost independence." When was it lost? Why, when the Deccan came under the British rule. At any rate what other meaning can be attached to this word? The translations had been put in Police Court months ago and Professor Bhanu might have been called before the sessions as a witness before you for the purpose of explaining, first of all, as to whether, as a matter of fact, he did use the words alleged in this article, and if he did use the words for the purpose of explaining what he meant. Professor Bhanu had not been called. And I do not think you will be of opinion that the fact that he belongs to the Reform party was sufficient to keep him out of the witness-box as the prisoner was quite at liberty to call evidence on his own behalf. If the meaning of the words used was untrue, surely Bhanu would have been called, but as he is not before the Court, I submit you have to decide the point on the translations before you and the evidence of Mr. Baig, who had said the only meaning of the word "swatantrya" was independence. If the case had been confined to that particular word, perhaps you will be justified in giving Tilak the benefit of the doubt, but you must consider the circumstances and time when

* The Advocate-General has mixed up the two paragraphs—one about Shivaji and another referring to the internal dissensions between the Poona Hindus—for making out his point. The same mistake has been made by Mr. Justice Strachey.—K. G. D.

the words were used, namely, during the celebration of the coronation of Shivaji who had procured liberty for the Hindus, that liberty which, they now allege, has been lost. We then come to the following passage :—" It will never be proper to place obstacles in the way of any person who with a true mind follows the path of uplifting this burden in the manner he deems fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country from above, cut him off; but do not put impediments in the way of others." There was also a dispute in regard to that, but Professor Bhanu had not been called to show what was meant by pressing down the country from above and that the correct meaning of the words only referred to some one being put aside, not cut him off but put him aside. When you consider how in the lecture of the Professor, *Shivaji* had cut off or destroyed Afzul Khan; when you consider that this is the gist of the lecture, don't you consider that the construction put on the passage by the prosecution was the correct one that it did mean that if any one was pressing down the people you are to get rid of him in any way you like, the same way as Afzul Khan was got rid of by Shivaji. The next speaker had apparently taken the view that " the people who took part in the French Revolution denied that they committed murders and maintained that they were (only) removing thorns from their path. Why should not the same principle (argument) be made applicable to the Maharashtra ? Being inflamed with partisanship it is not good that we should keep aside our true opinions.

In that connection I submit that Tilak suggested that it was perfectly justifiable for any one to remove persons in the same way as had been done in the French Revolution. Then there appears the reference in Professor Bhanu's speech as to the use of this festival, *viz.*, to unite the whole country in the same way that they did under Shivaji. Then we come to Professor Jinsivale. " People who take part, &c., are only removing thorns from their paths." That, I submit, is a correct reading of what Professor Jinsivale said with regard to the traditions of the Revolution applying equally to the Maharashtra ; he said people would be justified in removing persons from their paths who oppressed them like thorns in the same way as they did during the time of the French Revolution.

Then we come to Mr. Tilak's speech. He said: "Did Shivaji commit a sin in killing Afzul Khan, or how? The answer to this question can be found in the Mahabharata itself. Shrimat Krishna's advice (teaching) in the Gita is to kill even our teachers (and) our kinsmen. No blame attaches (to any person) if (he) is doing deeds without being actuated by a desire to reap the fruit (of his deeds). Shri Shivaji Maharaja did nothing with a view to fill the small void of his own stomach (*i.e.*, from interested motives). With benevolent intentions he murdered Afzul Khan for the good of others. If thieves enter our house and we have not (sufficient) strength in our wrists to drive them out we should, without hesitation, shut them up and burn (them) alive."

Then we come to that portion of Tilak's speech in which he says: "It is no use making fresh researches into the question of Afzul Khan's murder. Let us assume that Shivaji did murder Afzul Khan." I ask you to consider whether this is an entirely historical reference to the particular incident of the murder of Afzul Khan by Shivaji or whether it was intended to apply to the present time and

whether he did not intend to suggest to his hearers that they would be perfectly justified in acting with reference to those who are the present rulers of the country as Shivaji acted with regard to Afzul Khan. He refers to the advice which Krishna gave about killing our teachers and kinsmen. Then we come to the passage about which there is some dispute. "God has not conferred upon the *Mlenchhas* the grant inscribed on a copperplate of the Kingdom of Hindustan. *Mlenchhas* is the term applied to foreigners. It includes Mahomedans and all persons who are not Hindus, who speak any language but Sanskrit. This is the interpretation given by the official translation, but Mr. Baig said it meant "God has not conferred upon the *Mlenchhas* the grant of a copperplate to rule Hindustan." The prisoner alleges that the real translation is "God had not," &c. For the purpose of this case I do not see that it is very material whether it is '*had*' or '*has*.' The reference, I submit, is perfectly clear. It refers to the times of Shivaji when he turned the Mussalmans out of the country. Taking the whole of this article together, I submit, it refers to the present time, and the prisoner is endeavouring to excite his hearers and readers against the present rulers. But you will recollect that when he comes to publish the article of the 22nd June 1897 he corrects this and says the words which in the vernacular are entirely different. "No one had conferred upon the Mussalmans the *Sanad* (*i. e.*, grant) to rule." In the lecture at the celebration he says that the word used was Mussalmans. It will be for you to say on that point whether you are satisfied with the explanation which the defendant has given. But I do not see that much really depends on the word 'has' or 'had.' I ask you to read the article as a whole and say whether there is any doubt as to whether he meant to refer only to the times of Mahomedans of the 17th century or he meant that also to refer to the events of the present times. You will recollect the advice given by the prisoner to his hearers to get outside the Penal Code. I do not think that there will be any doubt as to the meaning of "if only you are doing some thing from which you do not desire any gain for yourself, then you will be justified." I submit that is the substance and object of the article. Taking the whole together, I ask you if you have any doubt in your mind whatever, as to the intention of publishing that article in the paper and in delivering the lectures. The object was to excite in the minds of the people a desire to imitate what Shivaji had done by pointing out to them that they would be perfectly justified, having regard to what Cæsar and Napoleon had done and what was done in the time of the French Revolution, when the opportunity arose, if they were to act in the same way as Shivaji did in regard to Afzul Khan. If I am correct in saying that that is the real intention of the article and in considering that you will take into consideration the object of these Shivaji celebrations of the present time, if you are of opinion that is the fair meaning of that article, then I submit that you will have no doubt in holding that it comes within section 124A of the Code. Of course, it may be contended—it was contended in a previous stage of this case—that the whole of this discourse was merely a sort of historical dissertation as to the character of Shivaji and the particular incident in his life in connection with Afzul Khan. I do not know that view will be pressed upon you by the defence, but I ask you to take into your consideration the various other articles to which I have called your attention, and say whether you have any doubt that this is not a correct view but that it was

merely intended to be an historical discussion on the life and character of Shivaji.

I do not think it will be necessary for me to go at very great length into the other documents and articles that have been put in by the defence because, as far as I can judge, they do not affect the case in the slightest degree. Let me take, for example, the article on "Shivaji's Tomb." It appeared, according to them, that about 1884 or 1885 some person or persons at Raighad brought to the notice of Government that Shivaji's tomb was in great need of repair. Personally I do not understand what is meant by Shivaji's tomb. I thought that he was burnt. But there is some structure which is called Shivaji's tomb. At any rate, Government in 1885 allotted a sum of Rs. 5 a year for the purpose of keeping the structure in repair. I do not think it has got anything to do with this case. The fact that the Government of that time were prepared to keep up in a decent state of repair this structure which is called Shivaji's tomb has nothing to do with the present case. It is no justification whatever for persons, taking opportunity of the celebration of the coronation of Shivaji, to utter what, I submit, are words of disaffection towards the British Government. I will not refer again to this. With regard to Professor Bhanu's lecture and the remarks Professor Bain made thereon, I submit that has nothing whatever to do with the present case. Then we come to the plague operations and the part which the defendant Tilak took in them. That, again, I think you will say has no bearing whatever upon this case. The first prisoner Tilak is said to have started the Hindu hospital, and it is true that an hospital had been started. But it was not a charitable institution; it was intended for persons who could afford to pay for it. First of all, you had to pay an entrance fee of Rs. 10 and Re. 1 per day for the privilege of being treated in that hospital. It is suggested that the articles before the Court were not calculated to excite feelings of disloyalty because he assisted in setting up a hospital for which people had to pay Rs. 10 entrance fee and Re. 1 per day. Then we have had a number of articles put in for showing that he made various suggestions with regard to the way in which the plague should be met in Poona. I have no means of judging whether they are correct, but from the articles it would appear that he entirely disapproved of the measures which Government had taken. Take the article which has been put in evidence, dated 4th May 1897 (*Exhibit* L). This is how he refers to the work of the soldiers who risked their lives to rid Poona of the plague. (Reads.) "There is no doubt that many people will have their lost courage revived on hearing that several of the soldiers, who have come here for the purpose of inspecting the houses, are to go back after eight days more. Everybody already knows now of the excesses committed by these soldiers during the Rand regimé; and at last even the truth of what we had written is becoming manifest, not only here but even in other places to people like Anant. It is true that Her Majesty the Queen, the Secretary of State, and his Council should not have issued an order for needlessly practising *zulum* upon the people of India without any special advantage to be gained, and that the Bombay Government should not have entrusted the execution of this order to a suspicious, sullen, and tyrannical officer like Rand; and for this one cannot sufficiently blame the Home Government as well as Lord Sandhurst." It also continued in

the same strain as follows:—"The soldiers committed whatever excesses they could; they defiled our temples, burnt down our slabs and mullers and pots, and whatever they found an opportunity to do so; they even put into their pockets things, great and small; but we are not only unable to seize even one of them by the hand, but even failed to take such other measures in concert as were necessary." The article appeared in the same issue of the *Kesari*, which contained the letter signed "Ganesh," and concluded with the following reference to the officer of Government:—"We are reduced to such a plight now that if the Government becomes oppressive we have not the ablity to punish it; if we cry out, the Government pays no heed; we do not understand what the law is; and our leaders are not prepared to make it convenient to give such physical or pecuniary assistance to the people as lies in their power under the circumstances. And that too in a city like Poona. If our eyes are not opened even now, we can only say that it is our misfortune and nothing else. We cannot write anything more than this." I do not think that any inference is to be drawn in favour of the prisoner from the articles that had been put in reference to the plague.

The next series of articles which have been put in are upon the Jubilee. There are three articles: the first and second of them mainly consist of accounts of the progress that the British Empire has made during the reign of the Queen. They are mainly taken from, I think, a work of Sir Richard Temple and from other works which are available. The third article goes to show that India has not benefited by the Jubilee. I do not think you will be of opinion that in any of these articles there is anything that shows the slightest loyalty of the prisoner to the British Government or the Queen. They have been read to you. I will not read them again, but I would just call your attention to one or two passages. (Reads.) "Our India has to-day reached a similar condition. Whatever be the reasons for the deterioration of this country, none can deny the fact that a hundred years ago, eminent warriors, statesmen and politicians were born in this country. And if anybody possessed vigorous learning or intelligence, there was then full scope to be obtained for their development. But now not only have those qualities been rendered useless by the superior lustre of the British rule, but disuse is leading to their extinction, and we are becoming so weak or lifeless that anybody may lord it over us or tyrannise over us all, or one might say we have already become so." I do not say that any person is not justified in writing and suggesting that the condition of India has not improved during the British rule. What I say is this, that you cannot regard these articles which have been put in this case as showing that the prisoner is a man of such loyalty that it would be unlikely and wrong to punish him for the offences alleged against him. This is the only object with which these articles are put in. With regard to the Jubilee we have something very significant. You have that extremely insulting article about the Indian Princes who had gone to show their loyalty to the Queen by attending her Jubilee. That article which I have already read to you is couched in the most insulting terms to those Indian princes who had taken the trouble and expense of going to England to attend the Jubilee. That shows really the view the prisoner took of the Jubilee. In considering this particular article upon the Jubilee,

which has been put in and on behalf of the defence, you will also consider that other article upon the Indian Princes who attended the Jubilee. I think there are other papers and letters; for example, the letter from the Private Secretary to the Governor acknowledging receipt of a certain memorandum, which the prisoner had sent. I say this has nothing to do with the case. It is perfectly true, no doubt, that the prisoner had submitted to Government a memorandum regarding the plague operations but that must not influence your minds one way or the other. Then we come to the documents put in yesterday; first of all there are some extracts from a Marathi book called the Balbodha (*Exhibit* 31). With regard to the article in this book it is attempted to show on behalf of the defence that this book had the approval of Government and had been used as a text book in Government schools. That I believe was a leading question. The witness, however, when I examined him, had to admit the fact that the book was not used in Government schools. There is no evidence to show that it was. The article which has been referred to (*Exhibit* 31) "Is India getting Richer or Poorer?" no one can complain of. It is a perfectly proper subject to discuss whether India, under the British rule, is getting richer or poorer. No one can complain of a discussion of that character. It is suggested why no prosecution was instituted on such writings while Tilak's writings on similar subjects were made the subject of prosecution. But the reasons why no action is taken on such articles is two-fold. First, there is no attempt to create disaffection in them; and, secondly, it is quite possible to find hundreds and thousands of articles of an improper and inflammatory nature in the length and breadth of India, concerning which no prosecution had taken place, as it was impossible for Government to be aware of the contents of innumerable writings of such description, and the fact that no one had been prosecuted in these cases was no justification for Mr. Tilak having published what formed the subject of the present charge. In this book they had a poem on the "Utterances of Shivaji," but it was a very mild effusion, although it had two ideas very similar to those expressed in the poem the "Utterances of Shivaji" which formed the subject of the charge. But there is nothing to show that the former sentences were uttered with the object of attempting violence or reverting to the stage where Shivaji left the people of Maharashtra.

The next book was the *Pushpavatika* (*Exhibit* 33), and it was sought to show that this book had the sanction of Government because it was sold at the Government Central Book Depôt in Bombay along with a great number of others, and one of the witnesses received it as a prize many years ago. It was in 1875 that the *Pushpavatika* book was published, and it was in the catalogue of the Government Central Book Depôt in 1875. It is a small poem – one of several articles in the book,—and really there is nothing whatever to show that this particular poem or the book generally was ever brought to the notice of any responsible Government official. In regard to the book *Balbodha* I do not think you will allow yourselves to be led away by the fact that the author was an Assistant Educational Inspector.

Government cannot be responsible for everything that Assistant Educational Inspectors or any other officers in the Educational Department may write, and I say also that this is the case with regard to the verses about patriotism. It is simply the utterances of Shivaji, merely a sort of dissertation on what Shivaji is represented

to have said to his own people during his life-time. I do not think they have any reference to the present time. Next is an extract from Major Candy's Marathi Fifth Book. Nothing more harmless than this extract could be found (*Exhibit* **36**) (reads). I do not think anybody, even the most severe critic can take the slightest objection to that article. All these articles were not intended to refer to the present time. They are merely dissertations on what Shivaji did, and there is no reference whatever to the present time. Gentlemen, these are all the articles which have been put in on behalf of the defence to which I need refer. I will not make any further comments on them. You will remember the articles which I put in. You will consider them before you come to any decision in this case. For example, the articles in the *Mahratta* on "Arms Act for the Baroda State" (*Exhibit* O), and upon "Indian Princes in London" (*Exhibit* P), and various other articles of the same description. You will consider these while considering the articles which are complained of against the prisoner, and, of course, in considering this matter, as his Lordship will no doubt tell you as I said before, you will have to consider the articles as a whole and not take out isolated passages. You must consider whether they bear the interpretation which the prosecution have suggested that they do bear. I do not think I have anything else to say in this matter. In conclusion I shall not in the slightest degree attempt by any word of mine to influence, excite, prejudice or influence your passions. That is no part of the duty of the counsel for the prosecution. I apprehend that it is the duty of the counsel for the prosecution merely to place before you the evidence in the case and tell you the interpretation the prosecution put upon the original articles which are the subject of the charge before you. You will have an opportunity of hearing from my learned friend what the answer is of the defendants to the charge, and no doubt you will give the fullest possible attention to it. If you are satisfied that these articles are merely expressions of disapprobation of certain measures of Government which are perfectly compatible with the desire to render assistance to Government or obedience to the orders of Government, that the article "Shivaji's Utterances" is merely a historical dissertation upon Shivaji and upon certain acts which he did, then you will find the prisoner not guilty; but, if on the other hand, you are of opinion that the articles bear the interpretation which I have suggested to you they do bear, then, I think, you will be of opinion that they are articles which ought to be suppressed; that they are articles which ;are calculated to do infinite amount of mischief in this country. If you are o this mind, I am perfectly certain that you will, without hesitation and unanimously, come to the conclusion that the prisoners are guilty.

(The Advocate General closed his speech at 12-45 A. M.)

SPEECH FOR THE DEFENCE.

Mr. Pugh said: May it please your Lordship and gentlemen of the jury,—I am sure that I am rising to address you with a very great feeling of responsibity, not only with regard to the position of my client and the punishment to which he is liable supposing he is found guilty of the charge, but also because it is a very grave thing when you have to stand up and meet the charge which is preferred by the Government of the country against one of its subjects. That is the position here. And further than that, I cannot conceal from my own mind, and you are perfectly well aware that a very great amount of public feeling has been excited with regard to the question; and I earnestly ask you, as my learned friend did, to dismiss altogether from your minds all that you have heard and all that you have read outside with reference to this case, and give an impartial and dispassionate consideration to the evidence which has been adduced before you. Not only have you got to set aside your prejudices naturally arising out of the writings which are disapproved of by many of us in the Anglo-Indian community, but here I have a further matter of prejudice, and a very grave, matter of prejudice, to meet, and that is regarding the deplorable murders of Messrs. Rand and Ayerst on the 22nd of June last, and there can be no question, I think, in your minds that had it not been for that we should never have heard of this prosecution at all. Now, here the accused are prosecuted with reference to certain writings in Mahratti. And you have it before you that all—or nearly all the witnesses that are called for the prosecution—come from Poona. The accused live at Poona. The paper is published at Poona. The Arya Bhushan Press is at Poona. Mahratti is the language of Poona. Mahratti is the language of the Court of Poona. Here it is not so. We are here in Bombay, in this extraordinary position; you, gentlemen of the jury, find it imposed upon your attention that which I should have thought would have been much better left to a Poona jury or to the jury of some place where Mahratti was the language of the court. Here now you have this extraordinary position: the majority of you, gentlemen of the jury, as I understand, do not know Mahratti. The learned judge has told us yesterday that he does not know Mahratti, and he has grave doubts with regard to what the proper meaning is of those Mahratti terms that have been laid before you and relied upon by the prosecution, and I myself also am unable to give you any assistance in this matter.

You will observe that my learned friend, in his opening address, laid very great stress upon particular passages and extracts, and he laid far more stress upon three passages in the articles, than upon anything else in the nature of a general survey or view of the articles. Now, however, he is obliged to give them up because he saw the mischief of asking you or any other jury to convict a man of an offence for which he was liable to transportaion for life upon the disputed readings of some Mahratti passages, which the majority of the jury did not understand, and which the counsel did not understand and the judge did not understand. My learned friend saw the difficulty, and that is how there is a change to the generala spect and the general tenor of his address. I have

nothing to complain of against my learned friend with regard to the way in which he has placed this case before you. He has put it before you with eminent fairness subject to this that he based the construction upon these articles which I shall ask you to say is entirely erroneous and unjustifiable. Subject to that, I have nothing to complain of with regard to the course that my learned friend has adopted.

But I think we have all cause to complain of the course which is adopted by the Government. My learned friend has said that Government was justified in proceeding against the accused in Bombay and that there has been jurisdiction because this paper is published in Bombay. But as there was jurisdiction at Poona, or if not at Poona, owing to the unrest spoken of by my learned friend, then in some other place where Mahratti was the language of the court, and where it was generally spoken. There is no doubt there was jurisdiction, otherwise you should be not sitting here all these days. But jurisdiction is one thing and justification for trying a case in the place where the language is strange to everyone concerned, and where the witnesses do not live is another and different matter altogether; and further than that, if this case had been tried in Poona there would have been an appeal from one side or the other, supposing that there was a miscarriage of justice as regards the verdict of the jury. The Government would have a right to appeal supposing that they considered that the Jury had wrongly acquitted the prisoner. But now my client is here before you. And, gentlemen of the jury, I am quite satisfied in leaving the case in your hands, because I feel sure that you will not be swayed by anything you have heard or read outside, and that if you are satisfied here that there is no evidence to convict him of the serious crime, you will find him not guilty. This is the feeling that I desire to impress on my own behalf and my client's, and I leave this case entirely in your hands.

You will remember, gentlemen, that when my learned friend addressed you on the first occasion, towards the close of his speech, he apparently laboured under a considerable difficulty in showing any grounds for the delay that occurred in bringing about this prosecution. Taking the dates, you will see the *Kesari* containing the incriminating article was published on the 15th of June 1897. No time is lost in public attention being called to it by the *Times of India*, and though we have not got the exact date, we have it in the letter of "Justice" in the *Times of India* somewhere about the 19th June. You have it also that about that date it must have been brought to the notice of Government, because, according to the evidence of Mr. Baig, the Oriental Translator, he was asked to translate the articles a short time after their publication and about the time "Justice" and others wrote their letters. My learned friend may very well say that the officers of Government do not read the *Kesari*, but some of them, no doubt, read the *Times of India*. Their attention must have been called to this question as to the meaning of these articles. Further than that, you have it—I am speaking with regard to Baig's evidence—that somewhere about the time I have mentioned, that particular article was sent to him by Government for translation. My learend friend, with regard to the delay, said that it generally took a long time in a case like that to get the originals carefully translated, by which he meant the translation that was used for the purpose

of guidance of Government. It is not a translation which is now before you. I may refer to that translation. The translation which was used in the Police Court was only made on the 30th July 1897. Therefore, before that time and within a week of the time that the article was published, the Government had before them some translation, and they must have had ample time to consider it. Instead of any condemnation of the articles, what do you find? You find that on or about the 24th of June and after the murder of Lieut. Ayerst and the attempted murder of Mr. Rand, and after these articles had been translated and placed before Government, as I understand, the first accused was appointed a Member of the Legislative Council; and I put it ot you that it shows conclusively that H. E. the Governor was not moved by the clamour of the *Times of India* in the preceding week and did not accept the position they have now taken. Having got a translation before him—even the translation of the Oriental Translator, of which I shall have to say further on, even then his Excellency was not satisfied that there was anything wrong about the articles. What you do find happened after that is this: when this correspondence appeared to have gone on in the *Times of India*, you have a letter from the first accused in the *Times of India* of the 30th June 1897, and another letter from Professor Bhanu on the 8th of July subsequent to that. These papers have been put in and are before you; and it is a matter of public knowledge that questions on the subject were asked in the House of Commons as early as the 15th July. One question was asked at an earlier date. But the most important question was asked on that day. These questions could only have been asked upon what was telegraphed home from India. As to what was telegraphed, it could only have been a substance of what was said in the *Times of India*, based upon some translations of their own,—probably based upon the translation made by the Government Translator. I do not think how these articles could otherwise have been brought to the notice of the members of Parliament who are not in the Government. And they pestered the Government with questions.

Now, you will not have any difficulty in reading between the lines. The Government at home were much exercised over this matter, and they thereupon sent out a mandate to have it cleared up, and the result is that this trial is instituted. This appears to be the way in which it was brought about. Therefore I have to say this, that bearing in mind how Mr. Baig gave his evidence, which I shall have again to refer to, it is clear from what he said that upon every passage he put a stronger construction—"stronger" was his expression, particularly in answer to his Lordship. When his Lordship questioned him with regard to one of the passages he said his view was that the meaning was stronger than what was conveyed by the translation of the Court Translator! Yet his translation was the only one which apparently the Government of Bombay had before them when they came to the conclusion, if ever they did come to the conclusion, to prosecute upon these articles. I say, "if they ever did come to the conclusion," for from the form of the sanction (*Exhibit* **A**) which has been put in, it seems they must have got instructions from Home and issued the sanction to Baig to prosecute in respect of certain articles in the *Kesari*, without any reference as to time, date or anything else, under section 124A of the Penal Code or under any other section. The whole matter was put into the hands of Baig, and this is the result you have.

My learned friend has said that I have not called Professor Bhanu; that I have

not called any one versed in Marathi to say what the true meaning of these words is. His Lordship will direct you that it is not for the defence to call evidence upon such matter. Supposing that the prosecution have not made out their case—and upon that point, it is quite clear also that the prosecution have not made out their case in any way so clearly as to warrant a conviction so far as the disputed passages are concerned—it was for them to call expert evidence. Now Government had nothing before them before they took any action in the matter, but the translations of the Oriental Translator. And they would never have allowed Mr. Baig to proceed upon these articles had they known in time what the translations of the Court Translator would be. The Court translation is what is called a free translation. I shall have to call your attention to that and to the other translation called the literal translation. It is also a translation of the Court Translator. You will see that in many points the one differs from the other, and differs materially, and if you compare them you will wonder how one and the same man could possibly work out two translations. I can only suggest to you this, that the original translation, that is, the free translation, is the translation of Baig very much emasculated by the Court translator, because you find many things with regard to the form of the passage which are very similar to the form adopted by Mr. Baig. For instance, you find the mark of interrogation put in the translation where the interjection mark only appears in the original. That gives greater force, as Mr. Baig said, and it makes that stronger, but it is a matter which is entirely unwarranted, and I shall ask you to consider these passages mainly by the light of the literal translation.

Now, gentlemen, before I proceed further in this case, I must say this, that I considered very much how I could shorten my address to you, because I am far from wishing to worry you with regard to the matter. But you will see yourselves that my learned friend has travelled over so much ground. I shall have necessarily to reply to those observations. No doubt we have prepared the ground for him to a certain extent in regard to the documents that we have put in. There is no doubt of it, but there is now a very great mass of documents before you, and it would be impossible—it would not be right—for me to do justice to the case without dealing to a great extent with these documents. I do not intend to read any single one of them. I shall only refer to those passages which appear to me to be material, and draw your attention to them only to show what the scope of the matter is.

Before I proceed to refer to the material passages I wish to put you on your guard against the last observations that my learned friend has made, and that is, that if you consider that there is any mischief to the country in this article then you can convict him. But what I shall ask you to consider is one point—and one point only,—whether these articles come within the meaning of section 124A. I am not going to put before you that everything in these articles or even that the general view or tenor, so far as the politics are concerned, of these articles is justified. There are several passages in the articles, which, though they may be open to discussion, were certainly not seditious or calculated to create disaffection in the public mind. My learned friend refers to the article "Is India getting richer or poorer under the English rule" (*Exhibit* 31) and says that was quite a matter open to discussion. The view the writer has taken up is that India is poor under the English rule. That must create discontent to a certain

extent. What you have, therefore, to consider is whether they create discontent or mischief in the sense my learned friend attaches them, but whether they would be an offence in regard to section 124A. Another thing that I want to call your attention to here is that the first of the incriminating articles is a poem. You all know perfectly well that poetry is judged in a different way from prose. A poetical effusion calls upon the people to rise in arms. But in such a case a far more latitude is allowed than would be allowed in a well-considered essay which has been issued to the people, and that is so all the world over. It is not a matter for which I claim a particular right for the people of this country. You will find the same thing all the world over. The other article, again, is an article which purports to be a summary of what took place at the commemoration festival of Shivaji during the three days and therefore it must be short. It must be very much condensed : there is no full text before you. And with regard to that also I must ask you to take into consideration the fact that there is nothing in the summary which would bring any one of the speakers under section 124A of the Penal Code.

First of all, let me say a few words in regard to this Shivaji commemoration festival. You have got an amount of evidence that we have put in, in regard to it. We could not help putting in these documents, because we did not know how far the prosecution intended to attack the festival as a festival. Now, my learned friend says that so far as the commemoration festival to celebrate the birthday or the coronation day of Shivaji is concerned there is no objection to it, if it is properly conducted.

Its origin comes about in this way. In 1883 Mr. Douglas first called attention to the neglected state of Shivaji's tomb in his "Book of Bombay." A passage has been read to you where he says, "no one cares for Shivaji." That was the pathetic way in which he began. He pointed out that this tomb was neglected. The next thing about it is some poem published by a gentleman, named Joshi, celebrating the exploits of Shivaji. The result of that was that a public meeting was called on the 24th of May 1885. I think that that was the meeting which Mr. Justice Ranade assisted in calling. Lord Reay was then the Governor of Bombay, who thought that this mov[illegible] ought to be encouraged and so made a small grant for the purpose of repa[illegible] the tomb and it was acknowledged in suitable manner in the *Kesari* of 15th De-cember 1885 (Exhibit No. 4.) There the matter seems to have flagged. The next thing that occurred after that was that Mr. Acworth produced his book of "Mahratti Ballads."

With regard to [illegible]s interesting to note that it has upon the outside of it the marks of Shiva[illegible]ely (a sword, a picture of a sword), and a tiger claw. It is the sword B[illegible]wani of Shivaji. That warrior could not read and write, and therefore he could only make a mark. Gentlemen, you know well that it was customary for people in this country, as well as in others, to use marks according to their calling. The farmer or the cultivator puts some mark in the shape of a plough. Christians make the mark of the cross. The Bania's mark is in the shape of the scales which he uses. So Shivaji made his mark by drawing something in the likeness of this sword (points the representation of sword on the outer cover of the volume entitled "Ballads by Mr. Acworth." The Advocate-General has made a good deal of the Bhawani sword. He is of

opinion that Bhawani was the goddess of destruction; the mark of the sword was something like an incitement to destroy the British raj. I say that this is not so. Bhawani is not the goddess of destruction at all in the original form. She was only so known when the name used was that of Kali or Durga. In Molesworth's and Candy's Mahrathi dictionaries Bhawani is described as the goddess Parwati in her personal form. Even supposing that Shivaji called the sword Kali instead of Bhawani it will not carry with it any such insinuation as the Advocate-General put upon it; for in any case Shivaji would have used the same mark for his signature; that sword, my learned friend says, is still treasured at Satara. It was for a long time treasured at Satara, but I believe that sword is now in the possession of the Prince of Wales, being presented to him during his visit to India. And there the matter ends.

After Mr. Acworth's "Ballads" were published in Mahratti and the translation of that in English, you have the "Book of Bombay and Western India," by Mr. Douglas, published in 1893, and the same passage is reproduced in this book with regard to Shivaji's tomb. Afterwards we have a notice of this in the *Times of India* of 21st April 1894 (Exhibit No. 9). I will not trouble you with regard to that. On the 23rd of April 1895 (Exhibit No. 1) you come to the first time when the first accused Tilak appears to be connected with the movement. Before that he only returned thanks to Lord Reay for the grant of Rs. 5 in 1885 (Exhibit No. 4). In the same issue (Exhibit No. 1) you have also this history of the movement given in the *Kesari*. That brings the history of the movement up to that time and immediately upon Tilak's coming forward, the *Times of India* found it necessary to come forward in opposition. (See Exhibit 2; *Times of India*, dated 29th May 1895.)

There is no doubt with regard to a movement like this that it is very difficult to collect funds unless there is opposition. In the same way many of you know that with regard to the public meetings at home it is [illegible] desirable to have some kind of opposition, and if there is no opposition yo[illegible] somebody to play the part of an opponent and put questions and so on, [illegible] it excites enthusiasm and warmth among the people, so accomplishing the purpose of the originators of such movements. This *rôle* the *Times of India* played here.

To return to the movement. "A Student" comes forward with a letter in the *Kesari*, in which he advocates the repair of the tomb very strongly, and he subscribes a sum of two annas. This is on the [illegible]0th April 1895. The result of that, following upon the start given by the *T*[illegible] *India*, was that they collected some twenty thousand rupees for the [illegible] of the festival. Then on the 4th June 1895 in the *Kesari* you have a written account of the public meeting which had been held to celebrate the birthday of Shivaji in 1895. (Exhibit No. 6). Upon that again the *Times of India* must again needs come forward and publish the letter signed by one "M. J."

Leaving 1895, we come to 1896. The matter becomes more important and you find the Advocate-General suggesting that some evil tone has been imported into these meetings during the last few years. Well, now, in 1895 there was no reasonable ground to apparently complain about. In 1896 things were in the same way. You have an article in the *Kesari* of

14th April 1896 (Exhibit No. 7), which explains what the object of these festivals was. Suppose that you have this movement going on up to 1895. Then this great festival is started in 1896. If you have one again in 1897, would you not expect my learned friend to show that there had been some great change in the tone? But there is no change either in the object of the movement or in the manner of jubilation since 1896. Here certainly in this article in the *Kesari* of 1896 you have an explanation of the object of the festival which was about to be held. It was held on the 15th of April. There is a long report on the 21st April 1896 as to what was done there (Exhibit No. 8).

There was no doubt a great jubilation over Shivaji; just in the same way as any of you, gentlemen of the jury, who are Scotchmen, would have done while celebrating the memory of Bruce and Wallace, in Scotland, in India or anywhere else. I myself have had the honour of attending these festivals, and I know that many things are said which to the outsider do not seem to be justified in considering the political position of Scotland at the present day. In my own country, Wales, we have also such festivals—the name of which is asdifficult to pronounce as any Mahratti word that has been called into question here. They are marked with great enthusiasm, but a good many Englishmem think that we talk a great deal of nonsense there. We like to do it, and I daresay we shall continue to do it. We like to keep up the spirit of patriotism which we desire to cultivate amongst our people. Whatever view may be taken with regard to Home Rule all round and Home Rule for Wales, no one can deny but that the Welsh people are perfectly loyal and will remain so; the same may be said of the Scotch also.

Here you have this movement for the celebration of the memory of Shivaji. It is instituted entirely upon western model as is shown by the articles to which I have referred, in particular by the article of 1st June 1897 (Exhibit No. 25). I should like to address you upon that point because my learned friend has referred to it as containing something out of the way and something improper. That article is materially a sort of resumè of Carlyle's Hero-Worship. I do not think if you carefully look through it you will find any line in it in which they go beyond what Carlyle says. (Reads from Carlyle). I am not going to trouble you with reading that article. Carlyle speaks of certain heroes, while this article mentions defferent heroes, and it concludes by saying that their hero Shivaji was greater than any other hero. I am sure it is enough for me to leave it for you to say as I have said that it is an article not in favour of holding such festivals as these for the purpose of improving the tone of society. I shall point out to you presently, when you come to the letter of "Ganesh," of which my learned friend made so much capital that that letter can never be said to reflect or re-echo the opinions of the editor. Such letters are merely of a commercial nature, giving the views of persons who have not the same views as those of the editorial staff. I shall point out to you and show you that that letter was from a man who was against these celebrations and considered them as of no use. He considered that it was better to take some other course. I will deal with it when I come to it. The passage in the article on Hero-Worship (see Exhibit No. 25), which my learned friend relied upon is innocent. (Reads.) " As Europeans are proud of the inspired speeches (writing,) of Dante, Shakespeare, Goethe and other poets and do not fail to mainfest their devotion for them; so our respect for Kalidas

Bhavabhuti, Moropant, Tukaram as heroes have not disappeared from our minds ; not only this, but what is more, we have under this rule got an opportunity of worshipping these heroes in a special manner. Under foreign rule, the political festivals alone have stopped, and it is natural that these should stop." That does not mean what my learned friend intended to convey to you. All that the writer intends to convey in that article is this: They (his people) have fallen under decay: they have become degenerate people. They do not take interest in themselves: you cannot move them; they have gone away during the plague in Poona, they have got no stamina in them! Gentlemen of the jury, what you have there is a general complaint, not only with regard to the Government but with regard to his own people. I shall show you when I come to deal with the question of the divisions which have taken place in Poona. I put it to you that there is nothing in the article any more than what Carlyle has said. The article is adapted to the circumstances in India. That passage is the only passage which is relied upon by the Advocate-General. I say that it is an innocent passage without any spice of disloyalty in it.

We then come to this that until the first of June 1897 the object of this commemoration was, so far as one can see, perfectly innocent. Well now, we come to the commemoration itself, and I must refer to the particular event in it, and that is the contest with regard to the murder of Afzulkhan. That has nothing to do, as has been recognised by my learned friend, with Mr. Rand's murder, which is universally deplored and also deplored by my client. But it is a matter of great prejudice in this case ; because that is more clear from my learned friend's opening than from his reply. What he had then sought to convey to you was that political assassination was taught at this meeting, and he said it was very likely that it may have brought about the assassinations of Messrs. Rand and Ayerst. My learned friend took care to say that he had no evidence whatsoever to show the connection between the two. Now, if it was intended by Government to charge Tilak with having incited the assassination of Mr. Rand, charging him amongst others, they could not have proceeded against him under section 124 A, but they could quite well proceed against him under another section of the Penal Code. They could not have succeeded, because it is admitted to you by my learned friend that they could not show any connection between Tilak or anything he said or anything he had written with the murder of Mr. Rand, and therefore no conviction could have been obtained against Tilak for having incited anything of the kind. But I go further and endeavour to show, I feel confident, to your entire satisfaction that there is not a single thing in the article referred to before you which points to the assassination of Mr. Rand or of any other European.

Then it becomes a matter for us to consider as to how the question of the murder of Afzulkhan came to be the main text of the speeches at the celebration, and so I will deal with it first. First of all, Mr. Karkaria reads an essay or delivers a lecture at the Bombay Branch of the Royal Asiatic Society. The *Times of India* comes next to the front by publishing and noticing that (Exhibit No. 9). A controversy on the subject of the essay ensued, which went on merrily. You have a reply of M. J. to Mr. Karkaria's in the *Times of India* of 7th March 1896 ; (Exhibit No. 10) ; then is Mr. Karkaria's retort to it (Exhibit No. 11). Then

there is a notice in the *Kesari* (Exhibit No. **13**) about Professor Bhanu's lecture, which was delivered on 28th March at the Deccan College, under the presidency of Professor Bain (Exhibit No. **14**). My learned friend says you can dismiss this from your mind because there is nothing in the notice at all. That discussion was innocent in March 1896. How can anything be said against it because the same subject was chosen for discussion in 1897?

We now come to the festival of 1897. Professor Bhanu, even if he did not agree with Mr. Tilak in any other matter, yet he was at one with him regarding the Shivaji movement. He belongs to the reform party while Tilak belongs to the orthodox party. They agree only in commemorating the memory of Shivaji. While asserting his opinion to that extent, I do not think there was any strong apprehension of any sudden combination between these two for the purpose of overthrowing the British rule. It may be a matter which may be possible a hundred years hence. Tilak says it will take centuries in order to overthrow the present Government, and until that time we should not trouble ourselves very much with that sort of rising. I take you now to 1897. The *Times of India* again comes forward on the 5th of March 1897. There are is a long letter in it, under the initials A. T. C., entirely backing up Mr. Karkaria (Exhibit No. **15**). I ask you to go over with me the lecture of Professor Bhanu. We have it that at the time of the lecture no one took any objection to it. You remember that Baig in his cross-examination told you that Tilak's speech was the only thing that was objected to, and "Justice," in the *Times of India* said that he had nothing to object to what Professer Bhanu said or Professor Jinsivale said. You particularly remember that Baig said that he had nothing to object to with regard to Professor Bhanu.

Having gone so far and having brought you to this day when the festival was held, I think the next thing that I should think of doing would be to examine these two articles, and with regard to that I shall have to take a little of your time and ask you to go through them very carefully, because they are the articles upon which the liberty of my client depends. With regard to the other articles I wish to speak somewhat more shortly. Now before I draw your attention to the articles I wish briefly to advert to the question of the meaning of the section. With regard to the meaning of the section my learned friend said he relied upon the *Bangabasi* case; and as this is a new section there is occasion to quote some English authorities on the subject. Gentlemen, I am not going to trouble you with any thing more than one particular English case.

You will find that in the charge of Justice Cave that the law of sedition in England, as defined by Sir James Stephen, who had introduced this section in the Penal Code, is practically the same as mentioned in that Code. It is impossible to consider the meaning of the section here without reference to the state of law in England. The words are just the same. In the charge Justice Cave makes the observation : "If I were a juryman I should say so and so." I should desire to put this matter before you because you must remember that this matter will have to be decided entirely upon your responsibility. His Lordship will direct you with regard to the meaning of these words (of the section). But taking the meaning of the section from his Lordship, it will be for you to decide as to whether what was written here falls in any way within the Code. Upon you and upon you only will be the responsibility. I would

add this further. I am not going into any question of law. But I want to point out to you, as I have already pointed out, that discontent, according to my learned friend, is not sufficient. My learned friend urges that it is perfectly innocent to make a statement of your grievances in the constitutional way. That such a statement is likely to create discontent is quite clear; but he (the Advocate-General) has no objection to it. Such a statement does not come within the terms of this section. If you find, my learned friend says, any mischief in these articles; if you find disfavour or ill-will towards the Government or even dislike, then these articles should be suppressed. But that is not so.

In England from the time of James II. the right of a subject to petition in respect of his grievance has been acknowledged, and that was really established by the verdict of the Jury in the Seven Bishops' case. In that case Justice Holloway said it was the birthright of every subject to petition. An eminent countryman of mine, who was on the Bench at the time, supported this right of the subjects. The opinion he then passed has never been questioned. It was established by Parliament at the time of the Revolution in 1688 by the Bill of Rights. Since then there has never been any question except with regard to the petition of the people who were going in a crowd to overawe the members of the House of Lords. That is, however, a different matter. The right of petition has ever since been recognised there, and has been beyond dispute. I should not have referred to it were it not for the fact that my learned friend put in particularly the article in the *Mahratta* regarding the Sarvajanik Sabha. We are not prohibited from petitioning. That is beyond the subject of complaint. *Primâ facie* they would have a perfect right of petition so long as their petitions are in proper form and there is nothing objectionable to that mode of representation This point was explained and explained a long time ago. The doctrine that it was wrong of a subject to say anything against the king or to criticise his conduct had long been exploded.

[At this stage, Mr. Pugh gave a clear and eloquent exposition of the law of sedition, explaining how it had undergone changes in the times of Queen Anne and the three Georges, when there were pretenders to the throne and when there was a great fear of revolutionary principles being imported from France. He then referred to Broom's Constitutional Law and said that now there is a more rational view taken of such criticism. The common sense of juries has done away with the ridiculous convictions that had obtained in England in previous times.—K. G. D.].

Now, what I ask you to do is not to consider these articles in a spirit of panic. I do not see what there is to be afraid of or what there is to trouble the Government, beyond that questions were asked in Parliament in order that more light ought to be thrown on the matter one way or the other. [As regards the murder, so far as we are aware, there is no doubt that the murderer of Mr. Rand has not been discovered, and I suppose that as time passes it is less and less likely that he or they will be discovered. I say that because the two murders could not have been committed by one and the same hand]. [With regard to another matter an attempt to overthrow the Government I fail to understand that there is any thing suggested in this article to that effect]. There is nothing to prove that a conspiracy existed to bring about these murders. There is no political conspiracy at all except, I

suppose, there should be something among the minds of the Mahomedans who have caused so much trouble in Calcutta or a similar cause for a war in the North-West frontier. But not a word has been said, nothing is suggested in connection with this festival of Shivaji that it was started for the purpose of inciting the people to join the Mahomedans as against the British Government. There is nothing of that kind. There is no suggestion of that kind. There is no trace of anything of that kind. Therefore I say, so far as the people alone are concerned, with the exception of these murders which happened at Poona, there was nothing in any way of a disquieting character. I shall also ask you to consider that it was perfectly absurd to suppose that a person in the position of Tilak should attempt to overthrow the Government, the result of which he well knew would be absolute ruin to him. You have seen him before you. You must have come to the conclusion that he is a man of very great ability from the way he has written these articles of the Jubilee. [Exhibits Nos. 26 (1), (2) and (3).] They appear to me to be exceedingly well done. No one could have done that without the assistance of some sort. But they seemed to me to be very ably written, and I put it to you that they are articles that bear the genuine ring of loyalty. The first article deals with the rise and growth of the Empire. The second article shows the greatness of the empire at the present day. That article, it is important to observe, was in the very same issue of the paper with these incriminating articles. I have not looked at the paper myself. I am told that is between the two. A column intervenes between them. That article, you will see, breathes the spirit of loyalty. Further than that, it shews the position and the power of England in the present day because of her Army and Navy as contrasted with the Continental nations. This will seem to you to be quite opposed to the suggestion that Tilak intended at this time to incite the people to overthrow the Government. He knew perfectly well that the power of England is now invincible, that it is at its zenith, and that it is not the time for the Mahratta to rise in order to overthrow the power of England.

Now I will turn to what my learned friend said about the plague. He said, "Supposing he had founded the plague hospital, it was a paid hospital. It received fee for everything; people paid a rupee per day and ten rupees as entrance fee for medicine and doctor's attendance. The promoters of the movement did not start the hospital by putting their hands in their pocket." I think I have a right to complain with regard to that. Because the position of Tilak at the time of the plague is this. Tilak had admiration for Lord Sandhurst. At that time he considered that his Lordship was too much in the hands of officers under him. He considered that H. E., if he felt himself free to follow his own view, would be no doubt an excellent Governor. I shall have to refer to some passages of his own to make clear what I say. What I want to impress upon you is this. Not only he has good feeling towards Lord Sandhurst, but he helped during the plague those under him, and he helped the Government, and he came forward also and took up a position in support of Government measures which was most distasteful to the great majority of the Hindus in Poona. When the majority of Hindus left Poona he complained, and complained bitterly, of their conduct. He said, "You are leaving Poona, you are going out of Poona and against the plague regulation you make a clamour and noise outside. Instead of that

you ought to remain in Poona and stand at your posts like men, and you ought to help your poor brethren." That was the line he took up. He supported Government by saying these rules are right. "So far as we can see by means of these rules only we could stamp out the plague and it must be done." He decided that without segregation the plague could not be stamped out. Segregation, as you all know and as it appears from these articles clearly, was a thing to which the people most strongly opposed. (See Exhibit No. 21) It was a grievance. Further than that, he pointed out that many lives would have been saved if they had gone to the hospital and segregation camps; and he urged them to believe that if they went to the hospitals they could be cured. He pointed out that there is no fear whatever of bad treatment in the hospital. In truth he said, "These statements are groundless and false."

The Advocate-General has asked you to see that in the articles there is a direct means of changing the disposition of the peeple to such an extent that they will be ready to revolt at the first opportunity. How is it consistent with the state of affairs? You find him here taking a bold and independent line; you cannot but come to the conclusion that he believed, and sincerely believed, that the measures proposed by Goverment were the right measures and that they ought to be adopted. He said so against the opinion of his own people and well knowing that he must give offence to them. It is quite inconsistent, it is perfectly inconsistent, that a man of such independent opinion should turn his mind to the idea of overthrowing the Government, in whatever way it may be. A man like that would never go to such great extent in making enemies with different classes of his own countrymen. As regards the Government, he was anxious to co-operate with them, he was able to go the whole way with them because, he said, "co-operation of the people is absolutely necessary in order to carry out the rules in a sufficient and effective manner." I shall shew you also his opinion of the people during the plague, especially the people who had gone out of Poona. He said, "You ought to be nearer home; you ought to form house-to-house visitation committees, so that if any excesses be committed by the soldiers you would be able to lay your hands on particular cases." He speaks ill of the people who had run away and deserted their posts. No doubt there was great jealousy with regard to Tilak amongst them. No doubt that jealousy must have been vastly increased when he stigmatized them as cowards for running away from their posts leaving behind the people who were unable to protect themselves. He said that if they were high men and men of influence and well able to make house-to-house visitation with the Government authorities, and then none of the things which are alleged would have happened. He said these things would have been impossible, supposing if they had remained at their posts and made house-to-house visitations.

I tell you of these matters before going into the articles, because it will relieve me very much from the necessity of taking up your time by going over the same ground. I shall point out to you the passages which I rely upon in support of the statements I have made. So far as it is necessary, his Lordship will refer to these articles as a whole or to such portion of the evidence which he considers to be most material. With regard to these articles which the learned Advocate-General has put in, in order to

show the animus of one side or the other. I am anxious not to detain you. But with regard to the incriminating articles themselves I must ask you to bear with me while I put them before you in their various details.

(Adjourned till 2-45 P.M.)

After resumption, Mr. Pugh said: We now come to the "Shivaji Utterances." I want, in the first place, to read one passage in it. The Advocate-General, you will remember, had in his opening speech read to you the account of the murder of Afzul Khan from Grant Duff's "History of the Mahrattas," who, I understand, had taken the story from the Mahomedan historians. I am not going into the question whether the historian was right or wrong. I want to read to you from the same book a short passage in which he sums up the position of Shivaji; and what he says is this:— (Reads the passage.) "Shivaji being certainly the most extraordinary person whose talents were viewed with admiration and his genius with wonder," &c. In another passage Grant Duff speaks of the internal progress and the great reforms Shivaji made in every department in the midst of his perpetual warfare, which shows that, besides being a great warrior and having fought and driven out of the land the Mahomedans of his time, Shivaji was a great administrator, and it was in honor of his general ability that the celebration was held. I understand this celebration, in this particular year, would have been held on the 3rd May 1897, Shivaji's natal day, upon which day it was previously held. It was held, owing to plague, on the 15th of June 1897, on Shivaji's coronation day. There are only three days in the year on which it can be held,—the anniversary of his birth, coronation or death. I will ask you also to bear in mind the references made in the *Balbodha* (Exhibits **31** and **32**). The Advocate-General is quite right in saying that the witness had said that it was not used in the Government schools, and therefore I do not desire to put the book in as being sanctioned by Government but as showing that the Utterances of Shivaji were in general favour amongst these people at its date of publication in 1875 or 1876, that is, a considerable time ago; that it was the general form amongst these people to teach the children the Utterances of Shivaji even before Mr. James Douglas came forward to show how Shivaji's tomb was neglected. There is also the other book, the prize book, the *Pushpavatika* (Exhibit **33**). I beg to refer to it again with regard to the reference that Shivaji was fighting with *Mlenchhas*, *Yavanas* or Mahomedans or foreigners. Now, there is no doubt that it was a work which could be looked upon as a harmless work. You cannot otherwise understand how it came to be sold at the Government Depôt. I do not mean to say that the Governor-General for the time had considered it and given his sanction to it. But it was looked upon as a perfectly harmless work by the responsible authorities. The *Balbodha*, though not under the Government authority, was also, up to the present, looked upon as perfectly harmless. You remember the Interpreter said that he took the book himself. So, now, you see that there are publications of Shivaji's Utterances in one form or another all these years. Then also as to calling a man *Mlenchha* or *Yavana* no one would have thought of taking exception to it.

I will now ask your attention to the utterances which are subject of my client's indictment. I will ask you to turn to the 12th page of our translations. That would be more convenient if we take the official translation and the literal translation, and

then our own criticism of words given on the original Marathi and in the Roman character in the first portion of the translation. [Exhibit No. 27(1).] With regard to these translations, I must remind you, gentlemen, that they are not something of our own; they are certified by the Government Translator as being correct and literal translations. (Counsel here read and commented upon the different lines in the poem thus :) "Having destroyed the wicked I greatly lessened the burden of the earth." To this no objection seems to be taken, but you might judge of the difference between the literal translation and the free translation by the fact that in the latter the word "earth" is rendered as "terraqueous globe." Then, again, "I delivered the country by establishing *swarâjya* and by saving religion." They are proud of their country, their ancestors and their religion. I may ask you to consider that even a man like "Ganesh" talks about the appearance of another Shivaji. But then it is idle to suppose that he wished another Shivaji to appear in the sense of Shivaji re-appearing in the form of one who would upset the British Government. It does not mean that when a man wishes that another Shivaji should appear that he wishes Shivaji to re-appear and head the rebellion against the British Government. If he re-appeared he should act according to the altered circumstances which we see depicted in the coronation articles. The evil that Tilak is deploring is with regard to the plague, the people going away, running away and leaving their countrymen helpless. Regarding administration, he says, if there were men like Shivaji in the present time they might be loyal to the Government and the Government would recognise their merit and would give them a larger share in the management of their affairs. This is perfectly right and not wrong ; this is perfectly consistent with absolute loyalty to the supreme power. (Mr. Pugh then reads "Alack ! what is this ? I see a fort," &c., down to "what a desolation is this?") That is, that the people are degenerate and that they ought to be in a far better position than they are now. Putting a liberal construction upon this passage, I can say that even apart from its being a poem this line can be said to convey no disloyalty. The fact upon which the Advocate-General relied very much in his opening speech, he to a certain extent had given up. Now regarding "dragging away Laxmi by the hand." There (in the free translations) you have "The foreigners are teasingly and forcibly dragging Laxmi by the hand." [See Exhibit 27(1)] If you look in any Anglo-Indian papers at the present time you will find it that there are heart-rending complaints increasing from day to day with regard to the expenditure of the war on the North-West frontier. You all know it generally gives you cause for anger, and you write things for which you would be sorry the next moment. You remember, also, that at the time of the Chitral Expedition many of the very prominent Englishmen whose loyalty was perfectly undoubted said rightly or wrongly : "You are spending money here which the country cannot spare, and it will draw you into further expenditure, and eventually expenditure of such a nature which the country will never be able to stand." Now, do you not read that the frontier policy will have to be re-considered ? I am putting that to you because the Advocate-General has admitted that it is not sedition to say "India is getting poor." How is it then sedition if you say "Laxmi is being dragged by the hand." I do not care whether it is translated "by the hand" or "by imposition of taxes." With regard to the income-tax there is unanimous discontent amongst Anglo-Indians

and natives at the present day. We say to Government "you ought not to spend so much money and ought to do without this burden of taxes"; whereas Government say "we cannot do without it; and we cannot spare it." In other countries you will find these complaints about taxation. You are perfectly familiar with this at home, but no one is ever charged with sedition for blaming the Government for spending money out of the country for the purpose of foreign warfare. English Government used to embark in great European wars and you would not find sedition if a man were to criticise the amount of money spent. No one would for a moment say that these "Shivaji's utterances are seditious." He does not attribute the plague in any way to Government. Shivaji is supposed to be looking down upon us. You have allowed his fort to crumble down. With regard to his own people he says, foreigners are taxing the country and they are taking away the wealth out of the country. I do not ask you with regard to these sentiments to agree with him. Neither shall I be able to agree with him myself. But it is not the question whether we agree with the sentiments, but whether the sentiments have promoted rebellious feelings in the people so as to make them rebel when the opportunity arrived.

He goes on, "Where are those expert Mavalas who were my second life?" The Mavalas were a portion of the Mahratta Army by means of which Shivaji achieved his first conquest as you read in Grant Duff's History of the Mahrattas. They were not a very high class people, but they made excellent infantry. "Eat bread once a day"—that again is a sentiment which you hear expressed in different places. You hear it in the House of Commons, and you hear it elsewhere. It seems to be the position which is freely established that the lower orders in this country are very insufficiently fed,—at any rate according to the European ideas. That is the complaint that you continually find urged by persons, rightly or wrongly, by those whose motives are above all suspicion of disloyalty.

"Those preceptors of mine, the Brahmins, who in the time of peace lived preserving their own religion." Now, we come here to another point, It is said here that these Brahmins lived by preserving their religion. These Brahmins are sacred persons and that they were imprisoned in a sacred place. With regard to that there is no suggestion that the Brahimins ought to be exempted from the operations of the Penal Code. There the reference is simply to a matter of history. Shivaji had an extraordinary veneration for Brahmins and probably, if one of the class had committed an offence, he would not have been punished. But this is as regards Shivaji's own time. It is perfectly open for any one to criticise the imprisonment of these Brahmins, assuming that it was owing to their having played music at the time when they were passing a Mahomedan mosque. It was very wrong that they should do it, and I dare say that the punishment was justified for this reason. I may take it that this is perfectly immaterial, but with regard to the criticisms, it is a criticism with regard to a particular trial and under special circumstances; and the press undoubtedly is allowed to criticise matters of that form. I am sure you will agree with me that in the columns of the English Press and more particularly in the "Legal Pillory," in the columns of *Truth* that there are much harder things said about the administration of justice than were even said by Shivaji.

Regarding the questions of the administration of justice in the "Utterances of Shivaji" the Advocate-General has put in articles about the persecution of the Brahmins in the issue of the *Kesari* so far back as the 2nd October 1894. (See Exhibit I.) He has read to you a portion of it, but I am sorry that he has left out the latter portion. It does seem to me that if you are going to blame people with regard to criticism of this kind you will have to indict the whole world for sedition, and then you will have a remedy which is worse than the disease. If you are going to blame people for criticism and indict them for sedition, the essence of the whole affair is that you should look at the remedies proposed. Now the close of this article is in the following terms:—"We therefore conclude this article after requesting 'Lord Harris' not to give an occasion for his successor to rectify the blunders committed during his regime, and we, after respectfully communicating to his Lordship our humble opinion, submit that the prosecution of the Brahmin leaders in the Deccan which has begun by his Lordship will never be conducive to good in the end." Whatever Mr. Tilak said in the earlier part of the article, in the end he states that because the Brahmins are imprisoned they are not to become rebels and extend the spirit of rebellion, but that he requests Lord Harris not to give occasion to his successor to rectify the blunders of his regime.

Then we will come to the question of the cow. Europeans are no more guilty with regard to the cow than the Mahomedans. Shivaji's exordium is with regard to the Mahomedans, and the Mahomedans only, of his day. So far as the Europeans are concerned, he was friendly with them. It is a matter of history that they all looked upon him as being friendly too. At the time of his coronation a Mr. Oxinden and others from Bombay went up to Raigurh and stopped there for three months. They were not afraid of being with him. They were not put to any inconvenience except for want of meat. They got everything in sufficiency. The complaint was about mosquitoes. They had a complaint against Shivaji because while he was fighting against the Dutch some English factory had been attacked and looted. Three ambassadors were appointed to arbitrate. The result of the three ambassadors' deliberation was that a very curious compensation was made for damages. "The cow, the foster mother, &c." You cannot possibly suggest that the Hindus are not to be allowed to go on protesting specifically against the killing of cows.

Now we come to another matter. Great stress was laid upon the fact mentioned in the article that between Europeans and natives justice was no administered. All I can say with regard to that is that you find it stated over and over again by many Englishmen themselves. I have heard it said very often that there is every now and then failure of justice, particularly when a European comes before a European jury. I do not mean to say that, there is the slightest ground to say that when a European comes before a European jury he is wrongly let off by his fellow-countrymen. It is a subject upon which I say there is general complaint. Whether in Bombay or on the Bengal side, the complaints are most frequent. I have never heard it stated that this was sedition on their part. In Ireland, the people, the lower orders of them, had the strongest objection to being tried by their landlords, whose conduct is severely criticised. But it has never been said that complaint on their part made them guilty of a seditious mind or anything of that kind.

(Counsel then reads.) " He himself came running exactly within the line of fire of my gun. I thought him to be a bear." This case has been gone into and you have it before you as a very bad instance, when my learned friend put in the article from the *Kesari* (Exhibit **H**) regarding Mr. Fagan. He said that the Penal Code provides for the punishment of a murder committed by mistake. My learned friend must not, however, tie a man down to an accurate legal definition of the offence. On a fair consideration of that article you will see that it means this :—that if a man, by some unhappy and unfortunate accident, kills another, well then that may be looked upon like a man being struck by lightning; the other man is not the direct agent in killing. Whereas, if a man by means of pulling the trigger, and pointing the gun at a person kill him, he commits a grave offence, though he may take a woman for a bear ; under these circumstances he ought to be punished. The meaning of the section referred to in the *Kesari* means really that he should be punished for a rash and negligent act and the punishment under the act for this offence is two years; and that section was added at the same time when the present section 124A was embodied in the Act in 1870; the section I refer to is section 304A. There can be no doubt that, that is what he refers to. I am not going to suggest to you that Mr. Fagan ought to have been punished in any sort of way, but what I do say is that if anybody takes the law into his hand he ought to be punished. To fire a gun and to pull the trigger should be done with very great care in order to see what the man was firing at. I can only put it to you that the criticism made by my client was justifiable, and that it is a perfectly justifiable position for any man to take up.

As to the passage " Their spleens are daily enlarged " they are enlarged in many cases no doubt,—it is quite true that men were struck by Europeans without any great violence, and they had fallen down and ruptured their spleens. To say that such cases are becoming more frequent is perfectly legitimate. The section under which you are asked to act now is not a section which makes it punishable to criticise the decisions of Magistrates or even of High Court Judges. But it is with regard to an offence against Government, and Government only.

Passing on to the passage :—" If any one were to look with improper eyes on another man's wife, at once a thousand swords would have sprung from their scabbards," &c. As to that, again, I do not know whether there is any case of that kind on this side. I have not heard of any. But on the Bengal side we have had more than one case. In some there have been convictions. I speak not so much of cases in railway carriages as of cases in regard to railway officials at railway stations. But I say that it is perfectly lawful, if justice is not in certain particular cases properly and fairly administered, to say so, as long as you do not do it for the purpose of stirring up the people to rebellion. Then with regard to the last sentence " Oh, cowards, how do you endure it." In the literal rendering we have the word " cowards," but in the free translation we have the word " eunuchs." Now, in Shivaji's time there was so much chivalry in Maharashtra that if any insult was offered to a woman " a thousand swords would at once leap out of their scabbards. " Now, this is a poetical expression, because there would not be a thousand swords in any one place. It is a poetical expression to say that supposing any

one's wife or family or relation was insulted the sword would be out. As regards the word "eunuch," I do not know whether there is much difference between that and "coward." But taking it in connection with "how do you brook this," the Advocate-General said on the first day that Shivaji calls upon his people to redress their grievances by sword. Well, I put it to you, that there is nothing of the kind. In the first place there is no question in the literal translation and in the original. He simply asks, "You miserable creatures, how do you endure this?" There is no sense of retaliation in this. It means simply endurance. "Get that grievance redressed." Now on this side of the free translation you have got "get that redressed." The argument of the prosecution was that "Get that redressed" meant it was to be done by sword. I am very averse to enter into discussion with regard to these particular words. I am glad to see that it is not necessary now since my learned friend has declared that he did not press for any particular interpretation of particular words, but what we say the meaning of true sentence is, "make a representation and get the grievance redressed." "*Dad*" was admitted, after considerable discussion, to mean a representation of complaint, or asking for relief. If this case were being tried in Poona before a Poona Judge and a Poona Jury every one there would know that it meant—"a prayer for relief." You know the expression "for further and other relief," which stands at the end of every petition, a prayer, which I remember, a Judge in Calcutta once said, was as the most comprehensive next to the Lord's Prayer. I cannot conceive it possible that you will convict a man upon some word here and there, the meaning of which is disputed and is read not in his own language, but in a court where that language is not spoken, and where neither the Judge nor the Jury nor the counsel understand it.

Now we come to the question regarding the treatment of Indian Princes. (Reads.) "He is mad. Lift him up and send him at once on a pilgrimage, &c." We know very well that there is an outcry in the country,—an outcry which has found expression in Parliament,—that Indian Princes are deposed without being told the cause of their deposition and without proper opportunity being given them to show cause against it. What possible ground there can be for saying that a man is seditious because he says that a Raja ought to have an opportunity of defending himself? It is wiser for Government to make known their grounds of decision in order that the public should see and be satisfied with their wisdom and justice. Ever since I have had anything to do with India,—and that is a very long time ago,—I have always heard complaints one way or the other with regard to the unsatisfactory relations between the Government and the Native States. But one was never taken up on a charge of sedition upon that account supposing that one objected to the way Government deal with some particular Prince, in the same sort of way that one objected to some particular conviction.

(Reads the following passage.) "How have all these chiefs become womanish like Kings on chess-board." I ask you to take this in connection with the article on Indian Princes (Exhibit P), and notwithstanding what my learned friend has said, I fail altogether to understand how that shows sedition. Supposing that a paper in England had made fun of one or other of these Indian Chiefs with regard to the way in which they appeared, no one could possibly have said anything against that paper. The answer may be that it was a different thing to say it in England from

saying it in India. I, for my part, do not see the difference, because the gist of the article seems to be that instead of these Princes going to England, it would be much better if they remained here, because the expense is very enormous. I cannot see why a journalist should not criticise the Indian Princes going to London and say, "You had better stop at home unless you are invited and you should not desire to press yourselves forward to see the *tamasha*." "Womanish," this word is translated as "become effeminate." The impression is that if they were well educated and taught the ways of governing their States, they would make good rulers.

Coming to the message of Shivaji, "I turn my sight towards another place, after having told a short message, &c." The real point is to see what this message is. The advice Shivaji was made to give after expressing those grievances is wholly inconsistent with the idea that this was published to create rebellion. Tilak at the time he published the jubilee articles, saw the enormous power of England, and threefore could not incite the Mahrattas to rise against England. For himself rebellion would be the absolute end of all his hopes, whatever hopes he may have had he has apparently achieved by his being made a member of the Legislative Council. He esteems this as a high honor, and they know from what he had done before and since, that he was not a man who cringed to the powers that were, in order to get honors from them. Now Shivaji's message was contained in the words "over whose vast kingdom the sun never sets. Give my compliments to those rulers who are (also my) good friends. Tell them 'Oh; how you forgot that old way of yours, when taking scales you made sales in the warehouses.'" This was a genuine sentiment, and in accordance with the teachings of history. Shivaji was friendly with the English, and it was equally true to say that the English were originally merchants in the country. The reference to the fact that Shivaji had power to send the English back to their country was also at that time correct; for the English were in most places small traders and a mere handful. Now, the Advocate-General has asked you if the sting were taken out of the article by the closing words "Therefore give happiness to your subjects. They are my own children." I maintain that so far from there being any sting this was a genuine suggestion that they should go to the rulers of the country, and that these grievances should be redressed. I ask if there is any sedition in saying so.

Regarding the question of sedition, I ask where the sedition is, and where is the disaffection to rebel at what they might think a fitting moment. I do not suggest it is necessary that they should rebel or be a party to rebellion, but such is the disposition which must be inculcated into them in order to meet the section as regards disaffection.

The only other observation that I want to make is about the mark of Bhawani's sword. It purports to be used as a superscription. I put it to you that there is no "veiled sedition in the words 'Bhawani sword." What else would Shivaji use?

I will now turn to the next article, of which we have only the free official translation. Now, my learned friend the Advocate-General cannot correctly apprehend what it was intended to deal with. Some of you, gentlemen, I am glad to say, are Hindus, and you will know whether what I say now is

correct with regard to this. A Puran is, as nearly as could be expressed, what they would call a sermon upon some passage in the Mahâbhârata or the Ramayana; it is not a light and trivial matter, but is looked upon as a sober, sensible and considerate address. It was just how you would look upon some text out of the old Testament, and the particular passage which occurred to my mind is the passage about Jael and Sisera and the song of Deborah. There they found the selfsame figures as between Shivaji and Afzul Khan. In the passage complained of, there was a suggestion that there was some higher form of morality of which we are not now apprehensive. I well remember in my college days attending Dr. Mansfield's Brompton lectures, and the doctor took this same view apparently with regard to these old heroes. This is a position with which one might agree or not, but it is exactly the same question as Tilak was discussing in relation to the incident of Shivaji and Afzul Khan when he said he declined to consider whether there was treachery there or not, because if there was, it must be judged by a higher school of morality. I think I can show beyond a shadow of doubt that when Tilak said that they were not to judge such men by the laws which bound common men like themselves, he was not speaking in any way in regard to the present day, but in regard to an old hero like Shivaji. Dr. Mansfield tells us that we must judge them by some higher standard of morality, and if we do not understand it we must believe it. First of all, regarding Prof. Paranjpé's puran, I do not think the Advocate-General has put that to you correctly. Dharmarâja is at the head of the Pândavas whose opponents are Kauravas. The Pândavas are representatives of the right; and the Kauravas represent the wrong side. Dharmarâja, afterwards called Yudhishthira, is a model king and ideal of all kingly virtues. Dhuryodhana is a strong man and he is against the Pândavas. The Pândavas celebrate the Rajasûya sacrifice, which celebration makes him monarch of the world. There we see that Tilak was genuine in comparing the Jubilee to this sacrifice, because he said that England's power was shown by his articles as the greatest power on the face of this earth. The Queen of England has reigned for a longer time than any other sovereign. Therefore, he compares the position of England celebrating the Queen's Jubilee to the position of the Pândavas celebrating the Rajasûya sacrifice.

One other word. Dhuryodhana is a man who is ambitious. He cannot brook that Dharmarâja should rule the world. But he is disappointed and wants to commit suicide. He was dissuaded by Shakunimama. The latter was the embodiment of mean and evil counsel, the Mephistopheles of the Mâhabhârata, who may be termed *Advocatus devili*. He says that Dhuryodhana must not rest content, the king must not rest content but must go on. If he had not that desire he will come to an end and his kingdom will be lost. We know that it is the law of nature. You must move forward, or you must go back; and that is what is preached here with regard to the king. The king must advance or go back. As regards the kingdom of the Queen, it has advanced in an enormous degree. And that is on account of the progress made by the English people. I ask you to bear in mind that Dharmarâja was an ideal king and an embodiment of all good virtues. I do not understand any Hindu reading this line will ever think that the counsel of Shakunimama was a counsel which

should be followed by people of the present day or followed at all, because they look upon him like an incarnation of the devil. The Advocate-General has read a considerable portion of the article on the "Shivaji Coronation Festival," but he omitted to read a great portion of it which dwelt upon the athletic games. I will read the whole article and ask you to consider with these festivals the circumstances which I have mentioned. The festival lasted for some three days. (Reads the first portion of the articles.) None of these speeches have been put in as exhibits, and we cannot form sufficient opinion as to what they were and for what purpose they were referred to. It was a remarkable thing to find all these Professors at a meeting which was supposed to be seditious. There was Professor Bhanu, Professor Paranjpè, and Professor Jinsivalè and others whose names were mentioned as being present at this meeting and who were in Government employ, and they are all supposed to have taken part in a seditious meeting. The Advocate-General says he does not know what Professor Bhanu said in his speech. The Advocate-General has not read the letter from Professor Bhanu stating what he did say. (Exhibit No. 16.) I may put it to you that it is a curious thing that Professors Paranjpè, Bhanu, and Jinsivalè are in the Government employ.

The Advocate-General: My friend is wrong. They are not in the Government employment.

Mr. Pugh: I am obliged to my friend for the correction. My mistake was a matter of degree. They are professors in State-aided colleges.

The Advocate-General: The Fergusson College gets an allowance.

Mr. Pugh: I do not think I need put it to you, you can hardly conceive, Government making a grant to colleges, the professors of which are known to be preaching sedition. They attend a public meeting and are reported to have preached sedition thereat. They are not called to account and no notice is taken of them. This seems to me a very remarkable thing. Professor Paranjpè's Puran is an exhortation, and I do not know whether you follow what the Advocate-General means with regard to his view of this article. It is a very significant thing that he compares the Diamond Jubilee with the Rajasûya sacrifice; he cannot himself say anything except that it is the highest celebration of the kind in India. It is performed by one who has conquered the world. It expresses nothing except what is in every way complimentary.

The reference to the policy of Dhuryodhana, *viz.*, "discontent is the root of prosperity," means that if you are not going to advance, if you are satisfied with that with which you began life, then you will never rise. If you have the desire to rise, then there is some hope that you will rise; without desire you cannot rise. What is put down in these lines is that the princes should not be content; the Brahmins should be content. With reference to the same thing you have in Mill's Representative Government at page 24, "A contented character is not a dangerous rival, yet nothing is more certain than that improvement

in human affairs is wholly the work of the uncontented character." And at another place, "Contentment is always counted among moral virtues. But it is complete error to suppose that contentment is necessarily or naturally attendant on passivity of character; and unless it is, the moral consequences are mischievous." I have referred you to that, simply to show that this is not a hidden evil, that there is no veiled sedition. Here in the Mahâbhâratta he is speaking of the kings only. Mill shows that it is a doctrine which has wider application. The Advocate-General puts it that all this is preaching sedition in the guise of a Puran or a lecture on a text from Mahâbhâratta. I ask you whether any man cannot fairly say that Professor Paranjpè's object was to expound the terms of the Mahâbhâratta. He had no other interest in the affairs of the world. I put it that it is simply a common point in the Mahâbhâratta. You cannot, as regards Section 124A, say that this is a report of the speech which imports disaffection that is not to be found in the original writing. In the case of the Shivaji's utterances there he points out the remedy. But you are asked by the Advocate-General to say that it means another remedy than the one mentioned in the writing. If the remedy is mentioned in the writing you cannot import into it any preaching for dissatisfaction or any dislike of the position of the Government. You cannot import that in order to convict Tilak of being guilty of sedition in respect of particular articles. (Reads further.) I ask you to say that there is nothing here at all that every child may not read in the Mahâbhâratta.

We now come to Professor Jinsivalè's lecture. What he says is that Shri Shivaji is a greater man than Cæsar or Napoleon, because Cæsar went to conquer the different nations of the earth and conquered most of them; he was going out of his country and conquering other people that he had nothing whatever to do with; and so again with regard to Napoleon fighting great wars and doing what people would have considered to be impossibilities; but he was after all conquering other people that he had nothing to do with; Shri Shivaji was a greater man than these two heroes because he was only gettinig back for the Mahrattas their own country and driving out the Mahomedans. Surely that is perfectly innocent.

With regard to the two passages of Professor Paranjpè and Professor Jinsiwalè, I have no hesitation in saying that if they are read by anybody in England who had any sort of knowledge of the subject and who can understand it, I think, you will not find a single man who understands this who will say that there is anything seditious or anything that ought not to have been uttered in what these two gentlemen have said. (He then reads the remaining portion of the first paragraph.) That is another story and I am not going to take up your time and describe this particular form of enjoyment. Then we come to the morning of the second day. (Reads the second paragraph.) To that the Advocate-General had no objection. These entertainments and exhibitions of skill in athletics were innocent. (Counsel now reads the report of Professor Bhanu's speech.) There is again a dim idea that there is something of a high form of morality which justified a man who had divine inspiration at the time when he was nine years old in killing anybody who would endeavour to kill him. "How can English writers have the audacity to belaud Clive, &c."—that is a sort of hero-worship. It means that nobody can show us a hero like our hero;

Gentlemen, I need not elaborate on that because the Advocate-General has said that any speech or writing which justified Afzulkhan's murder was by itself unobjectionable: and that Prof. Bhanu or any other person was at perfect liberty to make such a speech. All that he objected to was in regard to this particular matter that he in that speech preached political assassination. Now it cannot be said that it was the intention on his part to say " you, men of the present day, you may do whatever Shivaji did," or you are entitled to do what Shivaji did. I must ask your serious attention to that. In this connection you have it admitted that the lecture so far as related to the murder of Afzulkhan is not very objectionable. Could Professor Bhanu come forward in order to give counsel to these people that they should turn rebellious? I fear he would not. Evidence shows that he was the only one of the reform party who attended this ceremony. Like "Ganesh" he did not object to the celebration, and in his letter to the *Times of India* he states, what one has no reason to doubt, that this commemoration of Shivaji was the only point on which he was at one with Tilak. Professor Bhanu is not a man who would go and preach sedition to his opponents, to men who are not of his own party. What does he say? (Counsel reads from Bhanu's lecture.) I may say it is the matter of the highest importance, and ask you to bear with me while I read this passage. (Reads.) And if you put a reasonable construction upon words,—and I feel you are bound in a case like this to put a liberal construction upon the words—you will be able to see if these words bear two different constructions. Swâtantrya expresses freedom of any sort or kind; great or small. "We all are striving to regain (our) lost independence." I put it again. One is obliged to read the whole under the circumstances. It is impossible that Prof. Bhanu should have gone to these people who are his enemies so far as regards the domestic politics and said to them "we are all striving"—although we are fighting against each other—"to regain our lost independence," and "this terrible load"—like the British Government—"is to be up lifted by us all in combination." It seems to me to be absurd to say *that* when they cannot agree with each other even in small domestic matters. We say that he calls upon them to sink their differences with regard to religious and social matters, and to join in the improvement of the country by lifting the people from the degenerate state into which they have fallen. If these people of Poona would join and be loyal at the same time, they would do very great benefit to their country. They would improve the condition of the people to an enormous degree. "If any one be crushing down"—regarding this you remember what difficulty I had in getting a single straightforward answer from Baig about the meaning of these words, *Varun khali.* I put it to him whether he would say of a man who was going down that he was going *Varun khali.* You remember how long it took me to get an answer out of him when I asked whether he would not use that phrase when he wanted to say "coming down from the storey" or "coming down from a loft"; he said, "I do not know anything about the storey, but if it is coming down from the loft," it may be so. (Laughter.) *Varun khali* simply means down, as pressing down, or going down; but Baig will not agree with me, because he said it is unnecessary to add the word *varun.* He will not say *varun khali* means down from the upper storey, but he says that *varun khali* means down from the loft, as if it made any difference in the

meaning of *varum khali,* whether a person came down from an upper storey, or from a loft. My object is to show that *varun khali* is simply tautology. "Pressing down,"—pressing down must be from above. You cannot press down from below above. There is no other meaning there at all. It is simply a tautology. I say that it is straining the thing beyond what it will bear, to try to make you believe that what was here meant is "any superior authority of Government" or "any one in the Government." Regarding the words "cut him off," we have shown from the translations we have put in—they are official translations—that they mean "separating," "leaving them alone," "boycotting." I speak again with all respect and with much reservation. In writing to one of the churches regarding persons who created factions in the church, St. Paul said, if I remember rightly: "I would that they were altogether cut off that trouble you." The original Greek word, if I remember correctly, is *aptemnai,* which means literally "cut off." They should be set aside. Surely those that trouble the people and hinder the progress of the Church should be set aside. Cut them off. "Have no communication with them." But it does not suggest at all that they should be assassinated. You must have something stronger than the word of Baig to accept this meaning of the words "*chhatun kadha.*" In Major Candy's dictionary there are many words for kill, but not this word *chatane*; and evidently the context does not mean "kill." Professor Bhanu is trying to counsel his people to unite and try to do something for the good of the country, to regenerate the country and to improve the character of its people; and supposing that he does speak with the desire to get greater amount of freedom, and, if you like, greater amount of power in the management of their own affairs, is there anything seditious in that? Tilak himself says that it will take centuries to bring about that state of things. They say: "Let us improve ourselves and our condition. Let us have more lofty aims; let us teach the same to our children, and in course of time our children and our grandchildren may be able to take the administration of affairs into their own hands, supposing that they have the opportunity." There is no appeal to the force of arms in this at all. There are a number of people who say "we do not know what will happen in India in the course of a century." Sir Alfred Lyall, in a recent article, says: "We cannot tell what will happen in this country in the course of a century." You know perfectly well that the policy of the Government is changing from time to time, and it changes according as there is a Liberal Government or a Conservative Government in office in India, and it is perfectly open to the people to look forward to the return to power of those who favoured their views most and under whom they will get what they failed to get in the present time. That is a fair consideration, and the aspirations of the people are lawful. I shall read to you afterwards one or two passages in a work which was printed some years ago. I do not know if the author's views are the same now as they were then. But I know that those were his views at that time. And they were also the views of Lord Ripon and the late John Bright. The author I have mentioned just now is the present Chief Commissioner of Assam, who in his book had said that the English people ought to do all they can for the natives of this country in the way of education and otherwise, so as to fit them, in course of time, however long it may be, for administering their own affairs in some way or other under the supre-

macy of the British Government.* It may be said that this is a dream. I do not say that is a fact, but it is a dream which is perfectly lawful for any one to enitertain, and it is equally lawful for any one to try to further the idea by helping the people of this country to rise higher and higher until they should become fit to manage their own affairs We have given them local self-government in a great many places. They are allowed to manage their own affairs. Some say it has turned out well. Some say it has turned out ill and will undermine the imperial supremacy. So the holding of such views as these persons are holding cannot be considered to be seditions. Well, now, coming back from that to this article, he (Professor Bhanu) says: "What! have we not had enough of that strife which would have the same value in the estimation of great men as a fight amongst rats and cats." Afterwards Professor Jinsivalê said, &c. His contention is, that if no one blames Napoleon for committing 2,000 murders in Europe, why should Shivaji be blamed for killing one or two persons. Why should not Shivaji be venerated for his exploits. Why should not Shivaji take out a thorn in the form of Afzulkhan? What he meant by not allowing opinions to be permanently trodden down was that Hindus should unite together while each should preserve his independence of thought. That is also quite innocent. After the conclusion of Professor Jinsivalê's speech, President Tilak commenced with his discourse. He said: "This question which has to be considered should no be viewed from the standpoint of the Penal Code or even the Smritis of Manu, Yajnavalkya or the principles of morality laid down in the western and eastern ethical systems." This is the portion which the writer in the *Times of India* attacked, though he did not attack Professor Bhanu and did not take any notice of Professor Jinsivalē. The Advocate-General says that from this passage it appears that Tilak counsels his hearers to throw aside the restraints of the Penal Code. All that Tilak said was: "You must not judge Shivaji or great men like him from the standpoint of the Penal Code." He said: "The laws which bind society are for common men like yourselves and myself. No one seeks to trace the genealogy of a Rishi or to fasten guilt upon a king. Great men are above the common principles of morality. These principles fail in their scope to reach the pedestal of great men." In the light of Krishna's advice to Arjun to kill even out teachers and kinsmen is no sin. It is as unprofitable to discuss this ethical question as it is to discuss whether Afzulkhan was killed by treachery or Shivaji was justified in killing him. The passage in the *Kesari* is an illustration in favour of Shivaji and pointing out that it is in accordance with the advice Krishna gave to Arjun, though it would appear altogether wrong according to the ordinary rules of morality. No blame attaches to any person who kills any one for the good of the country. So that he is speaking with regard to past time and with regard to the old heroes. Then comes this passage which has been the subject of so much controversy. I am relieved from commenting upon it, because the Advocate-General has said this morning that he is not going to press for the

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* It is needless to state that there are many Anglo-Indian statesmen who have held such views—statesmen who have assisted in the building of the British Empire in India—men like Elphinstone, Munro, Malcolm, Bentick, and others.—K. G. D.

right meaning of "has" or "had." I feel satisfied with this; the isolated passages before and after the passage which contains the words "God had not conferred" are in the past tense, and then you have this sentence in the middle; well now many of you will understand the construction of *nahi* without the aid of Baig's evidence, if you know sufficient Hindustani. The consideration as to whether *nahi* is a verb or an adverb we must leave to learned persons. I look upon it as an adverb. *Dilele* is a past participle. *Dilele* is 'given,' and *nahi* is 'not.' If you put "it" as Tilak has put it, then *nahi* is "is not." It is a verb which cannot be conjugated, for which there is no tense and therefore which has no mood. We are told that there are two ways in which it is used, as a participle and as a past tense. It is in the past tense "given" and the other word is "not". According to one construction it means "it is not a fact that a sanad was given, &c." *Dilele navhate* refers to past times. Baig endeavoured to show that there was some difference between *Dile* and *Dilele*. I shall be able to show you satisfactorily that this is not so. The question was of the killing of Afzulkhan, and that is what they have to justify. "The Maharaja drove the Mahomedans away" and the Mahomedans were at that time called *Mlenchhas*. No doubt, *Mlenchhas* is attempted to be described as foreigners. The word that has been used in another document (Exhibit No. 32)—and that is put in—is *Yavana* for foreigners. I do not know whether the theory is right or wrong, but I have heard it said that the word was originally derived from Ionians, and the Greeks, having come over at the time with Alexander, were, as foreigners, looked upon as Ionians or *Yavana*. *Yavana* means exactly the same as the word *Mlenchhas*. When the Mahomedans came here that word appears to have been dropped more or less; and the word used instead was the *Mlenchhas*. Gentlemen, if you turn to ordinary books written by people who know the country you will find therein the word *Mlenchhas* applied to Mahomedans only; and I remember, just before I had anything to do with this case, by chance coming across a book of Mr. Allardyce's. It is called "Dhupa Nagar" or "the City of Sunshine." There I was much struck to read that the author had gone to a village in Bengal. He appeared to have made an intimate acquaintance with the character and the mode of thought of the people. In that village there was one Mahomedan family. The Englishmen were called *Sabs*, and the Mahomedans were called the *Mlenchhas;* and in no instance were the English called the *Mlenchhas*. I picked up that book before I had any connection with this case. I am told it is a well-known book, and some of you may know it. Whether it is so or not, it throws some light on the question as to what the term *Mlenchhas* would mean if applied to the present time. We have to consider the question as to what it refers to in this passage where it is used in connection with the advice of Krishna in order to justify the killing of Afzulkhan. It was urged as a good reason that Shivaji was justified in killing Afzulkhan, Shivaji being such as he was. But that reason cannot be applied to the public at large like ordinary people. This is the whole scope of the thing. Immediately after that passage you have got, "The Maharaja strove to drive them out of the country." The whole sermon is upon the same text. (*Counsel again read passages from Mr. Tilak's address and said*:) They did not want to unite in conspiracy for one day in order to turn out the British Government; their object was to improve their country. The Advocate-General, speaking about Râma and Râvana, said that Râvana and his small island of Ceylon represented the Queen

and her island of Great Britain. This is not correct. Ravana was not the owner of the continent of Ceylon; he was a bad man in that small island with small power. He had stolen the wife of Rama. The Advocate-General was straining the point beyond what he had any right to do in order to suggest that there is some hidden meaning in that. It never occurred to us to put that interpretation on it until the Advocate-General suggested it. I say there is no sedition in that. I hope you are of the same opinion.

His Lordship: It is 5 o'clock. I think this will be a convenient place to stop. We will adjourn till 11 o'clock on Monday.

FIFTH DAY'S PROCEEDINGS.

Monday, 13*th September* 1897.

Mr. Pugh, continuing his address, said:—"When the court rose on Saturday I had concluded reading to you what I would call a literal translation of the article headed "Shivaji's Utterances" and a free translation of an account of the celebration; they were both official translations, both certified by the official translator and interpreter of the High Court, and therefore as far as the authority is concerned you have to look upon one as of the same authority as the other, the only difference being, that the one was a literal translation and the other a free translation. I have suggested to you that there must have been other translations which are not before you, and upon which the prosecution were acting until the 30th July.* I have already suggested and would suggest again, that, that translation has not been produced, and the only reasonable conclusion is that the prosecution had been proceeding up to that time upon Mr. Baig's translations which have been emasculated by the interpreter and have now been placed before you as free translations. I am sorry I have not got a literal translation of the whole of the second article, but I have a literal and certified translation of the passage which occurred at the conclusion of Professor Bhanu's speech. [See Exhibit No. 27(2).]

You will see in that (Reads) "Every Hindu, every Mahratta, no matter to whatever party he may belong, must necessarily rejoice at this festival, when they all meet to consider how they could best gain their lost liberty (*independence*)—independence, the word used in italics, is in the free translation—and how the formidable burden could be uplifted by (us) all together, &c." The Marathi words, which are rendered as "cut off," when literally translated, mean "to separate or to set aside."

When you take into consideration the literal translation of the words you should at the same time bear in mind that Professor Bhanu was the only man belonging to the other party present on the occasion, and he,

* It will be well to note here that the complaint was laid before the Chief Presidency Magistrate on the 27th when he had no translation before him. It was not before him on the 28th when an application was made before him for bail, which he refused to grant on the ground that there were reasonable grounds to believe the accused to be guilty of sedition. The Magistrate did not know Marathi. He had no translation before him. Mr. Baig's complaint was only formal. How could he then come to the conclusion that the articles were *primâ facie* of a seditious nature without knowing the contents And how was he justified in refusing bail under the circumstances?—K. G. D.

standing there by himself, wished to impress on the minds of his hearers that they should unite in some measure, so far as they could, in the commemoration of Shivaji, and was anxious that they should better the position of their country and thereby better their own condition ; but he saw very great difficulties in the way, and he accordingly said that they must unite themselves at least for that occasion. And Tilak, who was also present at the meeting, afterwards observed that they ought to unite together on at least one day in the year. It is obvious that the members of a community meeting on one day in the year did not and could not have contemplated an overthrow of the British rule. It was absurd to say that any overthrow of the authority was meant or proposed to be made, considering that the two parties had their bickerings and their jealousies and their divisions between them. There was not the slightest evidence of any intention of the kind, but the whole thing is perfectly plain if you look at the article with an unprejudiced eye, which I am sure you will.

The special reference made by Professor Paranjpè in respect of the Diamond Jubilee is perfectly innocent. You have again Professor Bhanu's speech, which is purely a justification of the killing of Afzulkhan by Shivaji. Prof. Jinsivalè's speech is also a justification of Shivaji's character. With regard to the exhortation to unite, I contend that whether we are speaking as Scotchmen or Welshmen or any other subject race, we are perfectly justified in exhorting our countrymen, either from feelings of patriotism or loyalty, to improve the condition of the country and its people. Such a spirit is perfectly compatible with loyalty, and it is even desirable to cultivate for the good of the people and the Government. There is no evidence before us that there was any sinister motive or sinister intent on the part of the speaker. My learned friend said that Prof. Bhanu, Prof. Paranjpè and Jinsivalè were not Government servants, but it comes to the same thing, because they belong to a college which is aided by Government and is purely a Government institution.

I will next call your attention to the terms of this Section 124A in the Penal Code, and with regard to that I would point out that my learned friend said that he would not refer to any English case, and I can quite well understand why he did not do so. I will refer, however, to one case only, in order to show that the word "sedition" is used in a wider sense in England than in India, because sedition in India was directed against the Government only. In fact, rioting is sedition in England, while here it was governed by another section of the Penal Code. I would, in connection with that, draw your attention to a case decided in this High Court. But we must here see how the law of sedition in England is divided in the Penal Code. First, then, we have the offence of sedition or of creating disaffection against Government under Section 124A. Any one exciting riots and tumults would be guilty of sedition according to the law as it obtains in England, but in India it is dealt with under a wholly different section, *viz.*, 153, while Section 499 of the Code, dealing with libel and defamation, includes the third aspect of the law of sedition, namely, of sedition libels.

Now, the first thing I want to call your attention to, is with regard to the collocation of these sections. Yow will find Section 124A in Chapter VI. (*Reads*).

It refers exclusively to offences against the State. Again, you have another chapter of offences relating to the Army and Navy. Then follows another chapter relating to Offences against the Public Tranquillity. This is a case of offences against the State, and I would point out—

His Lordship: I do not wish to unnecessarily interrupt or put you out, Mr. Pugh, but I think that any discussion of the law as to any particular construction of Section 124A ought to be addressed to me and not to the Jury.

Mr. Pugh: I am not going to address the Jury on any matter of law, so far as I can help, but in this case, as in the *Bangabasi* case, the question of law was very much mixed up with the question of fact, and it is impossible for me to address the Jury without touching the legal aspect,—of course subject to your Lordship's view of the law—in order to point out that it was not sedition. Your Lordship will remember Mr. Justice Cave's charge in a case arising out of the riots in Trafalgar Square, in which he pointed out that discontent and the causing of ill-will need not be seditious. It was for the Jury to see whether the circumstances brought what was said within the term sedition. It is my desire in addressing you, gentlemen, that you should take the law direct from his Lordship and not from me, and that you should only take into consideration my own views regarding the words which I endeavour to prove are not seditious. The learned Advocate-General has already quoted the section with the explanation, though he left off that portion of the section which dealt with the punishment.

His Lordship: It is customary in this Court for counsel to read the section, leaving out the reference to the punishment.

Mr. Pugh: I am not complaining that the Advocate-General did not read the latter part of the section dealing with the punishment. I refer to it because sedition is a very much greater and graver offence in India than what was known in England. You must receive the law from his Lordship, but what I desire to do is simply to explain the section and ask you to come to the conclusion that Tilak did not, by means of those articles, intend to create disaffectiou against Government. But I must explain to you what it is that I mean by disaffection to Government. If I am wrong, his Lordship will correct me. (Reads the explanation to Section 124A.) I only mention that in order to show you what the gravity of the offence is, which is intended to be dealt with there. You may disapprove, however much you like, so that the disapprobation is compatible with the disposition to render obedience to the lawful authority of Government and to support the lawful authority of Government against unlawful attempts to subvert or resist that authority. You may criticise the omissions of Government. You may question their measures. Measures do not mean Bills merely; they include all acts and omissions of Government as ordinarily understood. This is the definition of Government that we have under Section 17, "Person or persons authorised by law to administer the Government in any part of British India," and the section immediately before it defines the Government of India vested in the Governor-General of India in Council as regards the power which may be lawfully exercised by him. (Quotes from Mayne on Criminal Law.) So that there you have the Government of India as being the Government of this

country, and in the other section the Government of Bombay is, I apprehend, to be represented by the Government of Lord Sandhurst, or, as the section has it, by the Government established by law in British India. Now, you cannot do or say anything which will put the people in the frame of mind in which they will be ready to resist the orders of Government, or to resist, or subvert, or prevent any one from assisting, or refusing assistance to prevent any from resisting or subverting, the Government. But I submit that you cannot go beyond these words which were introduced into the Code by Sir James FitzJames Stephen. The section, as you know, had been unaccountably omitted from the Code as it formerly stood. Sir James Stephen, you will find, was quoted by Mr. Justice Cave in the case of John Burns and others. A meeting was held in the Trafalgar Square and there very violent speeches were made and there was a general disturbance. The people, rushing down Pall Mall and St. James's Street, smashed windows and anything on which they could lay their hands. Burns was tried for having incited the people, and I will read from that case passages in which the law of sedition was discussed at some length. (Reads from 16 Cox's Criminal Cases, p. 355.) The learned Judge, quoting Sir James Stephen, said that seditious intention was to bring into hatred or contempt, or to excite disaffection against the person of her Majesty, her heirs and successors or the Houses of Parliament or to incite her Majesty's subjects or to raise discontent or disaffection among her Majesty's subjects or to promote ill-will and hostility amongst the different classes of such subjects. I will now quote Justice Fitzgerald on the Irish Law in the case of the Crown *v.* Sullivan (see 11 Cox's Cr. Cas. 44), in which his Lordship urged the jury to deal with the writings in a fair, free, and liberal spirit. You must remember that in political articles great latitude is allowed. If they were written in a fair, free, and *bonâ fide* spirit they were calculated to do great public good. They must not be judged with the eye of narrow criticism. It should be remembered that the liberty of the Press is to be preserved.

Referring to the narrower scope of Section 124A., Mr. Pugh said: If Burns had been tried in Bombay he would have had to be proceeded against under Section 153 of the Penal Code under the head of abetment. In this case the question was whether it was meant to make the people rebellious or it was meant for the alleviation of the miseries and the improvement of the condition of the people. (After quoting from Mr. Justice Stephen) "Sedition is in itself a comprehensive term, its tendency being to incite people to insurrection and rebellion." Passing over a whole page we come to 361, Justice Fitzgerald in Queen *v.* Sullivan, in Ireland, and I shall be able to point out to you that their speeches are far stronger than anything we have got here. I am only referring to one passage which refers to British Isles. (Reads.) This must have been looked upon as pretty well idle words. (Having read further quotations from the same law book, Mr. Pugh continued.)* In this case I ask you to believe that Tilak

* At this stage Mr. Pugh's contention was this. Sedition did not mean every kind of discontent or ill-will. It is, according to Fitzgerald J., allied to treason and precedes it by a short interval. It includes only such practices as are likely to disturb the public tranquillity (for which there is a separate section—§ 153—in the Penal Code); or as will lead ignorant persons to subvert or overthrow the Government. In the latter case such practices will come under § 124A. The bringing into hatred or contempt of her Majesty or her representatives will come under § 499 of the Code. Further, writings and speeches coming under §124A should be considered in a fair, free, and liberal spirit. The Judge should put them to the jury as matters of common sense, and not of law.—K. S. D.

was sincerely anxious to co-operate with Government in alleviating the distress under which the people of Poona were at that time labouring.

We then come to the particular charge made againt these two men. I am not defending the second accused. I only refer to him in this way. I have a complaint against the conduct of Government in the case, and I put it to you that if Government had had these translations before them at the time when the proceedings had been instituted, I venture to think that they would not have thought of proceeding with the case with any reasonable prospect of a verdict in favour of the prosecution. I will not comment upon the case of the second accused, but I will only quote from Mr. Justice Cave's judgment which was appropriate to his (the second prisoner's) case. (Having read portions of the judgment, Mr. Pugh continued : That shows before a man is convicted of sedition you must first prove a criminal intent. Instead of withdrawing the case against Tilak the prosecution had instructions to carry the matter to its bitter end, and in connection with this it must be remembered that for many days in July Tilak was confined in Jail, and that when an application for his bail was made it was objected to by Government, notwithstanding there was no reasonable ground for believing that he would fly from justice. (Reads from Justice Stephen's judgment.) You will remember that it has been put to you before that the idea of preaching assassination has no ground, and if there was it would come under another section of the Penal Code. My learned friend has told you that he has no evidence whatever to connect these articles with these particular deplorable murders. He only said, "I ask you to say from these articles that they are likely to produce those results." Well now, you have it laid down clearly—his Lordship has already put it to you in the interest of the second defendant that before convicting him you must be satisfied as to whether any criminal intention on his part has been shown. Now I think the other passage I have to read is on the last page, page 365, as to it being necessary that the mischief which it was intended to incite should have occurred. What is said with regard to that is this. (Reads.) That is how Justice Cave puts it, and at the end he points out this construction and the consideration whether it is likely or reasonable to suppose that, that is the construction to put on it under the circumstances. The circumstances here were that the power of England was such as has been described by Tilak in the Jubilee articles. "I cannot conclude without expressing, &c." I ask you to say that it is absurd to suppose that he would have intended to incite those people in such a way as to dispose them to subvert or overthrow the British Government. I ask you to consider with reference to this also that as regards the celebration of Shivaji he could not possibly have that intention for this reason, that, if there was the intention to overthrow the British Government it could never be done or attempted to be done without a combination between the Hindus and the Mahomedans. And as regards the celebration of Shivaji, there was nothing which could more effectively tend to alienate the sympathies of all the Mahomedans from the Hindus of Poona than such a celebration. It would be impossible for Mahomedans to attend such a meeting. Now I have quoted to you what Justice Cave has said regarding the view of Mr. Justice Stephens, and I want to point out also two passages in which Sir James Stephen has explained the meaning of this section. The

first of these, if not the last, was referred to in the *Bangabasi* case before Sir Comer Petheram.

His Lordship : May I ask you, Mr. Pugh, what you are referring to.

Mr. Pugh : I am referring to the proceedings in Council upon the introduction of this Bill.

His Lordship: I am afraid I cannot have any reference made to that matter.

Mr. Pugh: I put it to your Lordship with great respect that it is a matter to which I am entitled to refer. In the first place it has been referred to in the *Bangabasi* case, which was quoted by my learned friend Mr. Jackson, and I remember rightly without objection. Now, the position of the legal member bringing in a bill in the Legislative Council here is similar to the position of the Lord Chancellor bringing in a bill in the House of Lords, and it is similar also to the Government who brings in a bill in the House of Commons and states the objects and reasons for bringing in the bill. The first case that I would refer to is the case of Moss *v.* Thorne, before Lord Westbury, the then Lord Chancellor, reported in Law Journal No. 31 (New Series, Part I., a case of Bankruptcy) at page 87. I need not refer your Lordship to the difference of opinion which arose there with reference to the question as to whether a reference to the speech of a member introducing the Bill is admissible or not. (Reads.) That was in 1861-62.

His Lordship: I suppose the House of Lords expressed their opinion in that case.

Mr. Pugh: No, my Lord, that was not so, as the case was before the Lord Chancellor sitting as Lord Chancellor.

His Lordship: I was under the impression it was the House of Lords.

Mr. Pugh: No, my Lord. We come afterwards to the case which went to the House of Lords after this matter had been discussed and referred to. I am referring to the case of Queen *v.* the Bishop of Oxford and others. The report I am referring to is reported in the Queen's Bench Division, Vol. 4, page 525.

His Lordship: In what year was that?

Mr. Pugh: 1879. The following judgment was also delivered. (Reads.) I think it was in regard to the Church Discipline, and it is at the bottom of page 549. (Reads.) In that I submit that I have got the very strongest authority in English. Lord Bramwell said you cannot quote speeches in committee, but that is another matter.

His Lordship: With all due respect to you, Mr. Pugh, the case cited seems to be dead against you, as it is shown that the speech made in introducing the bill could not be referred to. What happened was that the Lord Chancellor referred to the existing Acts of Legislature. In this case, Mr. Pugh, you want to read the speech made by Mr. Justice Stephen, as he then was introducing the Act of 1870, which made Section 124A of the I. P. C. law. There is another reason why this case is against you; that case went to the House of Lords. Before I mention that, I should say that the Court of Appeal decided that it was wrong in admitting the speech. When the matter went to the House of Lords, some most eminent

members expressed the strongest disapproval at allowing the speech to be read. That is how the matter stands.

Mr. Pugh: As regards what was said in the House of Lords, I have not got that report before me.

His Lordship: I am saying that they were all most eminent members of the House of Lords, who expressed the strongest disapproval to what the judges of the Court of Appeal had done.

Mr. Pugh: I have not got it before me, but I take it from your Lordship. What I wish to do is to point out to your Lordship the decisions which have been accepted in this country with regard to the speech of a legal member and with regard to the object and reasons for the introduction of a bill. I quite admit that, excepting in so far as they aid the construction, we cannot have reference to the speech of any one for the purpose of construing a bill. I will refer your Lordship to two cases: one is the case reported in I. L. R. 14 Cal., page 721. It was a Full Bench case that came before the Judges Prinsep, Piggot and Ghose in 1881.

His Lordship: I do not know that it was a speech in Council. I think it was about objects and reasons in the report of the Select Committee.

Mr. Pugh: Yes, my Lord. Your Lordship will see that it was followed by the Calcutta High Court in I. L. R. 17 Cal., page 858.

His Lordship: I think, Mr. Pugh, that case is an authority on your side.

Mr. Pugh: That was a Full Bench decision upon the judgment given by Mr. Justice Piggott. That was the proceeding followed in the case which I have just mentioned.

His Lordship: Is that a Full Bench decision?

Mr. Pugh: No, my Lord, of two judges only. They were Justices Macpherson and Norris. (Reads.)

His Lordship: Their opinon was divided.

Mr. Pugh: Justice Norris was inclined to take another view.

His Lordship: He afterwards said he agreed with Justice Macpherson.

Mr. Pugh: I have a judgment of the Full Bench, and two other learned judges following them. Will your Lordship allow me to read what Mr. Norris said? (Reads.) Then, my Lord, I have the case in Madras. It is a Full Bench case, I. L. R. 14, Mad., p. 342.

His Lordship: That was in the year 1891.

Mr. Pugh: Yes, my Lord, Queen *v.* Fisher. This is the course of argument (quotes from page 346); it is a judgment in the Court of Appeal. It was allowed to be referred in the cases I have cited, and my Lord, it has been pointed out to me that there is a case in this Court in 1893 before Sir Charles Sargent and Justice Bayley for the purpose of considering the question as to whether the debate upon a bill by the Legislative Council is or is not to be referred to.

Advocate-General: The first few lines at p. 156 say,—

His Lordship: What do you say is not to be referred to?

Mr. Pugh: The debate is not to be referred to; it is at the bottom of page 135, and it is in the judgment of Chief Justice Sargent. He held that it is wrong

to refer to the debate of the bill for the purpose of construing the section of the Act. It is in I. L. R. 18 Bom.

His Lordship: Why do you cite it?

Mr. Pugh: I feel compelled to put before your Lordship what has been decided. It is in accordance with the views of Mr. Justice Norris who draws the distinction between the reading of the report of the Select Committee and the Objects and Reasons. In the speech of the member who introduced the bill, Mr. Justice Norris had in his mind no doubt that you were unable to refer to a statement of this or that in the speeches of the other members of Council in the course of discussion upon the bill. In the *Bangabasi* it was referred to. I do not remember if it is referred to in the report.

His Lordship: I suppose Sir Comer Petheram acted in accordance with that view.

Mr. Pugh: Yes. But your Lordship is not bound to follow the Full Bench decision of the Calcutta High Court or of the other judges. I put it to your Lordship that it is extremely difficult. Supposing that you have a legislature of this kind where they put forward their reasons for the measure, in short what their objects and reasons are. If we are to follow the ruling laid down by Justice Coke, it is extremely difficult to say that you ought to exclude this matter from your consideration. Further, my Lord, I would ask your attention to the case of Reg. *v.* Pawari, reported in I. L. R. IX Bom., p. 362. There is one other case which I must refer to. It is a case before Sir Charles Sargent Justice and Justice Bayley, and reported in Bombay Vol. 8, p. 147.

His Lordship: I know that case; it is with reference to objects and reasons; it was the practice of this Court to refer to objects and reasons and not to the speeches made in passing through the Council.

Mr. Pugh: My Lord, I do not want to go so far as that.

The Advocate-General: My learned friend was, on the other hand, against the reading of that. (Reads pp. 39-40 of I. L. R. 19 Cal.).

Mr. Pugh: I submit that the speech explains the objects and reasons for the introduction of this bill, but if your Lordship be against me upon that point, I shall ask if your Lordship will be pleased to allow me to read the passage as a part of my speech, as that expresses in better language what I have to express.

His Lordship: Mr. Pugh has cited in support of his contention that it is permissible, in construing an Act of the Legislature, to look at the speech of the Member who introduced the bill, certain English and certain Indian cases. I will deal with both of them. In regard to the English cases, I have referred to a case in which Lord Westbury, no doubt, had referred to a speech made in the House of Lords. In that case, which was decided in 1861 or 1862, Lord Westbury was not sitting in the House of Lords, but was sitting as Lord Chancellor, and there is no doubt he was a judge of high eminence. I have no doubt whatever that in England, since that time, the practice has been against citing, for the purpose of the construction of statute, speeches made in the House of Lords or House of Commons. The case of the Queen against the Bishop of Oxford was decided a good many years after the case of Lord Westbury and came before the Court of Appeal in 1877. It is not necessary to

go into the facts of the case, for it will be sufficient to say that the question for consideration was the construction of the Public Worship Regulation Act. One of the counsel in that case was Mr. Bowen (afterwards Lord Justice Bowen), and in course of the appeal he attempted to cite speeches that had been made by the Lord Chancellor when he introduced the Bill to the House of Lords, in which speech he discussed the then existing state of the law. In doing so he dealt with the Church Discipline Act, which was a previous Act of the Legislature and in regard to which he gave his opinion, of course, explaining what were the objects of the new Bill which he was bringing forward. In the case referred to, it was at once stated as an objection that it was not permissible to refer to speeches made in Parliament. In answer to that, Mr. Bowen had to admit in the fullest manner that he could not ask the Court to look at the speech made by the Lord Chancellor with reference to the Bill, but that they must draw a distinction between that and the Lord Chancellor, giving his opinion upon the then existing law, the Church Discipline Act, which had been in force for some time. With regard to the existing state of law the Lord Chancellor's opinion was of the greatest possible value and rightly deserved a great deal of respect, but his speech in introducing a new bill could not be admitted. The judges were divided on the point whether or not it was right to allow the speech to be referred to. Lord Justice Bramwell had no doubt that it was admissible. One of his colleagues was doubtful, and Lord Justice Thesiger was quite opposed to it. The case went to the House of Lords, and Lord Cairns and Lord Selborne expressed strong disapproval of the action of the Court of Appeal in allowing the speech to be looked at. Therefore as far as the English law is applicable in this case, it is completely against the view that a speech of the kind might be looked at, for the purpose of considering the construction to be placed upon an Act.

Now what is attempted to be done here is not to introduce a speech like that of the Lord Chancellor in examining the existing Law but a speech introducing a bill—a speech of Mr. Stephen at the time when he introduced in 1870 section 124A of the Indian Penal Code. Now, in view of the English cases to which I have referred, I have not the faintest shadow of doubt that a speech of this kind will not be admissible. Coming to the Indian law, the latter is still more clear. Although Mr. Pugh has referred to many cases he had not referred to the most important of all. Mr. Pugh has referred to Calcutta cases and Madras cases, and has shown that at the Bombay Court it was the custom to allow "objects and reasons" of a statement put before the Council to be referred to. Mr. Pugh had cited the opinions of judges for whom I have the highest possible respect, but the most recent decisions must be borne in mind. The latest case Mr. Pugh cited was the *Bangabasi* case in 1891. The course followed in the *Bangabasi* case was to some extent allowed in Madras and Bombay Courts. But the latest case was one from the Privy Council (The Administrator-General *vs.* Premlal, I. L. R. 22 Cal. 788—799), which binds us here, although all the High Courts had ruled to the contrary. The Privy Council laid down in 1895 in the most clear and distinct way that the proceedings of the Legislature were not to be referred to for the purpose of construing an Act. If there was any practice to the contrary at Calcutta, Bombay or Madras or in any Court in India it was wrong and must not

be sanctioned in future. This Privy Council decision was upon a Calcutta case and the Privy Council lays it down in the broadest possible way that the things referred to in the Calcutta High Court—the statement of objects and reasons and the reports of select committees—are not admissible. Since that case was decided, another case has been decided by the Calcutta High Court in 1896, in which the decision of the Privy Council was followed and the report of a select committee was not allowed to be cited. Even if my own opinion were otherwise, I should still hold that after the Privy Council decision it is not permissible to take as aids to the construing of an Act the proceedings of the Legislature resulting in the passing of that Act. If, however, I were to consider the case apart from authority I might say I entirely agree with every word of the judgment of the Chief Justice of the Allahabad High Court in another case, who condemned the practice of referring, as aids to the construing of an Act, to statements of objects and reasons, reports of select committees, or statements in Council. Now, Mr. Pugh said that if I decide against him as to the admissibility of this as an authority he would read these speeches as part of his argument. This he can do, but it was quite easy to avail himself of that privilege in a way which was an evasion of the law the Privy Council had laid down, and which, I follow. Mr. Pugh can read the whole of the speech, but he cannot put it before the jury as the opinion of Mr. Stephen or any other kind of authority at all. To allow that would be a mere evasion of law laid down. Mr. Pugh can read anything he likes if he thinks it is put in words he could not improve them upon.

Mr. Pugh: Now I shall read those words and ask you to take them as part of my argument, as putting the matter before you in better words that I can possibly use. The words are these. "Nothing could be further from the wish of the Government of India than to check in the least degree any criticism of their measures, however severe and hostile, nay, however disingenuous, unfair and ill-formed it might be, so long as a writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within this section." (See Proceedings of the Legislative Council for the year 1870, page 442.) With regard to that I say that that is the true meaning of the section and it comes to what I have said, that there must be an intention to create a rebellious spirit. It might be that no rebellion followed, but it must be the intention of the speaker or writer to put his hearers or readers in such a disposition that they will resist or subvert the lawful authority of Government. Now, one more passage. "The question of trial under this section would always be as to the true intention of a speaker or writer, and this intention would have to be inferred from the circumstances of the case. The most bitter and unfair criticisms, published by a newspaper in the common course of its business, might be perfectly compatible with the absence of any intention to advise resistance to lawful authority."

These, gentlemen, are the words which I intended to put before you and leave them to you without further comment. Sir James FitzJames Stephen expresses my views much more clearly than I would myself express them, and I will now refer to the *Bangabasi* case, and I shall detain you only for a minute with regard to that. The Advocate-General in his summing up laid great stress upon the summing up of the Chief Justice of Bengal, but that has no connection with this case before you. In that case the articles complained of were of a

different description. In view of the time this case has already occupied, I will not read them. The words used were very strong, but I will only refer to one passage, perhaps one of the greatest importance: "We are unable to rebel, but we are not of those who think it would be improper to do so if we could." Throughout the case before you, you will find nothing of this kind, not the shred of a suggestion to rebel. Those were no doubt obvious words pointing out that they should rebel if they could. They implied, "I do not say you are now in the position but you will be quite right to do it."

Well now, the passage that my learned friend relied upon in his argument,—it was an answer of his Lordship the Chief Justice of Bengal, to the argument of Mr. Jackson, who used some argument, I do not clearly remember the exact purport of, but it was to the effect that disaffection and disapprobation were synonymous words and had one and the same meaning,—and the Chief Justice said that if that reasoning was sound it would be impossible to convict a man under the section. "You, gentlemen of the jury, are thoroughly acquainted with the English language and know that there is a very wide difference between the meaning of the two words disaffection and disapprobation, &c., The Chief Justice said when the prefix 'dis' is added to a word, the word formed conveys the idea opposite to that conveyed by the word without the prefix. I have always looked upon this passage as something which ought to have been eliminated out of the charge and treated simply as an answer to some argument of Mr. Jackson's. With regard to those words it is quite impossible to follow the Chief Justice there. If you look in any dictionary, you will find you cannot always follow the rule he lays down. You cannot apply this rule to distension. Distension does not convey the opposite meaning to tension, and discrimination cannot be contrary to crimination. These are the words of the Chief Justice in answer to my learned friend, Mr. Jackson. The argument was not a good one and the answer was not a good answer.

When we come further on as regards the charge itself, I do not know if there is any particular that could be objected to. (Reads p. 44.) This is what we have on the explanation of the section that disapprobation does not come within the meaning of disaffection. That is the purport or the charge of Sir Comer Petheram. With regard to that I do not know there is anything that could be particularly objected to. (Reads.) "If a person uses either spoken or written words calculated to create in the minds of persons to whom they are addressed a disposition not to obey the lawful authority of Government, or to subvert or the resist that authority, if and when the occasion should arise, and if he does so with the intention of creating such a disposition in the minds of his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of this section." This seems to be the substantial part of the Chief Justice's charge. If the words are likely to have this effect and further that if they are intended to have this effect then it comes within the section.

Gentlemen, as regards the meaning of disaffection my learned friend has quoted Johnson's Dictionary, where it is put down as "dislike" or "ill-will." That is obviously the etymological meaning of the word; when you come down to Webster's Dictionary you have "alienation," "disloyalty" and "hostility." What I would point out to you is that with regard to disaffection it nowhere uses the words "contrary to affection." It is nothing

of the kind. For instance, you do not speak of a man being disaffected to his wife. It is a word which, as far as I know, is used with regard to two matters only. You may speak of a regiment as being disaffected. It is used when a regiment is in that state of feeling when the men will not obey the lawful orders supposing they were given and when an army are ready to go over to the enemy. Then with regard to the subject as against the Government. If the subjects are prepared not to obey the orders of the Supreme Government or supposing they desire to resist or subvert the Government then it is disaffection. But looking at it in the popular sense—and this must be looked at from the the point of popular sense,—I say then you can only come to the conclusion that there is no other meaning of the word as against the Government.

Now we have come so far with regard to the actual construction of that section, and I would point out to you that there was a case in this very court which arose out of the riot between the Hindus and Mussalmans which took place on the 11th of August 1893. It was before Justices Jardine and Ranade (Qneen-Empress *vs.* Kahanji, I. L. R. 18 Bom., p. 758 1894,) and was in regard to a poem in which he called upon the Ghatis to "fight again." A great number of passages are dealt with at great length in the judgments of Messrs. Jardine and Ranade, and I cite to you from the judgment of Mr. Justice Ranade. It has special reference to these utterances of Shivaji (Reads 773-774 *Ibid*).* I am using that judgment in order to show that you should not pay much attention to poetic expressions as referring to the present day. The judgment of the other learned judge is to the same effect, and if time permitted, I should have been glad to quote it. Having regard to the time you have been already kept, I do not propose to do that.

Now I shall have to go through those articles, which I must refer to, and which have been put in by one side and the other. With regard to them again, I will deal with them very shortly. You will remember the articles contributed by "Ganesh" and "Dasanudas" (Exhibits **J** and **K**). The *Kesari* has been published every week for many years past, and the prosecution in searching its columns for objectionable matter have been compelled to take several contributed articles such as the letter of "Ganesh" and "Dasanudas" in order to prove the animus of the paper. I put it to you that this is not fair. My learned friend said that it was open to me to explain these letters by calling evidence as to who wrote them. It is not for me to call evidence. If the prosecution wish to prove the policy, they should have confined themselves to editorial articles.

The first document I wish to refer to is that signed "Dasanudas," and "Dasanudas" was, you remember, the man who complained about the action of the Government in refusing to receive further correspondence from the "Sarvajanik Sabba." The writer went on to say that the Sabba must have been pursuing an independent course, and that if the Government of Bombay would not listen to their petition, they should go to the Government of India

* The following passage from the judgment of Mr. Ranade has a special reference to the poem in this case:—" The praise of the Ghatis and Kamatis was a rhapsody suggested by the course of events as they took place, and as the writer was a Hindu and a Gujarati, and the Mahomedans were admittedly aggressors in the first instance, such digression was not at all beyond the license allowed to ballad writers and rhapsodists."

direct. But the Government of India may say, according to the rule, you must go back to the Government of Bombay. There can be no objection to that. But the paper was not responsible for the expression of opinion in a letter as distinct from an editorial. I must point out that the proposal of the Sabha was perfectly consistent with loyalty. There could be no objection to an appeal being made to the Government of India by the Sabha. The suggestion that the Sabha should have agents to be in touch with the people and to bring their grievances to light in every town throughout the Deccan was equally unobjectionable.

We next come to the article of "Ganesh." What I want to say with regard to that is that "Ganesh" was a man who did not agree with Tilak in this matter of the Shivaji celebartion. The point of this article, according to the prosecution, is that he said they had better stop at home and pray for a new Shivaji. The writer did not mean to suggest that the new-comer should do just as Shivaji did. Supposing the Scotchmen prayed for another Wallace, it does not mean that the other Wallace should follow in the same footsteps of Wallace; he would have to alter his conduct to suit the time as regards the weapons of war. He would have to suit the policy of the times or else he would be of no practical use. He would have to act according to the state of the country. I do not see what objection there can be supposing "Ganesh" said "pray for another Shivaji." No Shivaji would try to subvert this Government as he did the former one. It is within the canons of poetical effusions to say "Pray to heaven to send us another Shivaji." Then "Ganesh" says that these Shivaji celebrations are positively of no use (reads *Exhibit* K). That is the whole of that article, and I feel sure you will not think that the prisoner is liable for it, and even if he was it was clear it showed no seditious mind.

Well, then, you have the article put in by the prosecution, which complains about the people going away from Poona and says that they ought to have remained there and formed committees. I will read a few lines from that article in order to show you that it is no sort of disaffection towards the Government (reads *Exhibit* L).

His Lordship: What is the date of the last article?

Mr. Pugh: 4th of May 1897, my Lord.

Mr. Pugh: What I say with regard to that is, it was no sort of disaffection towards the Government that was being urged there—it was an appeal to the leaders of the people to do their duty towards them in connection with the plague. You might cavil at the expressions it contains against Government and the strong complaints against the people who have gone out of Poona, without doing their duty, but you cannot say they were of such a character as to deserve to be described as seditious. I quote a few passages simply to show that it said that they ought to stop there, form sub-committees, and ought to assist in building an hospital for our fellow people.

I must read to you this report containing Mr. Tilak's speech because a great deal has been said about it. You must consider this letter with reference to this that the construction that I put before you now with regard to the *Mlenchhas* is perfectly innocent. It does not refer to the present rulers of the country. In

support of this view, I can show you a paragraph in respect to that particular matter from a book published by Mr. Prior, Principal of Elphinstone School, in which a father, supposed to be writing to a schoolmaster as to his boy's instruction, says: "I desire my boy to be taught in the learning of the Brahmins, Vaishyas, the *Mlenchhas*, the, Christians and other peoples." *Mlenchhas* does not necessarily mean Christians, because it may have a wider significance. Christians are not included by the Hindus among the *Mlenchhas.* The matter is of no little importance because we have a letter of "Justice" in the *Times of India*, in which he attempts to make out that the word had reference to the British rule. I want to know who "Justice" is, but he seems a personal enemy of Tilak's, who tried to do him an injury. I think he should have been called here to show what meaning or impression he derived from the words as he read them.

Now we are entirely without any evidence on the part of Government (reads "No one had conferred on the *Mlenchhas*, &c."). I ask you to take this as the sentiment of an honest man. "Justice" has taken a brief summary of the speeches given in the "Kesari" and put an entirely erroneous construction on them. Now Tilak corrects himself in the "Kesari" of the 22nd June 1897, but you have not to consider whether the actual word that he had used in the "Kesari" of the 15th June was *Mlenchhas* or Mussalmans. It is wholly immaterial which word was used, supposing that the words had the same meaning and were intended to have the same meaning.

In this connection I should like—and it would be convenient to me—that I should take another letter which is in our Exhibits (*Exhibit* No. 17) written by Tilak, on the 30th July, in answer to the criticisms of "Justice" and "Shackles" (reads.) There is a direct challenge for any one to show that during the whole time the plague was raging, there is a single thing in the *Kesari* or the *Mahratta* which would incite people to break the peace or to have recourse to force. The article we have put in shows that his view is altogether different. Even the *Times of India*, you will see, was not able to find a single article of that kind. Although my learned friend the Advocate-General is speaking about an attempt to overthrow the Government, he has been unable to point out any single article which shows an incitement to people to break the peace or to have recourse to force.

In this letter Tilak goes on to point out that the reference the correspondent had made to vigilance committees was a mistranslation. All that he urged was the formation of committees for each lane or peth to look after the property of the segregated persons and so on. The idea was not that which was understood by the term vigilance committees at home, namely, the protection of certain individuals or sections of the public in cases where the law was not regarded as affording sufficient protection. The letter goes on to point out that "it was a sheer mistake to believe that the native papers had excited the feeling of disaffection during the time of the plague. He said: "The press accepted the principle but complained about the unnecessary harshness of its execution." You are probably aware that the Bombay Government itself anticipated dissatisfied scavengers' strikes or riots. It does seem to me a remarkable thing that Government themselves saw the danger regarding the interference with the man-

ners and customs of the people, and they went so far as to warn the Secretary of State about it (*vide* Plague Blue Book). At the same time they say that Tilak was preaching and writing disaffection for saying the very same thing. Those deplorable murders of Mr. Rand and Lieut. Ayerst, I would remind you, had occurred a considerable time after the plague had ceased and that after the soldiers had been withdrawn. If you have riots or tumults, they generally follow immediately after the events which cause them (counsel having read another passage from the same letter said): I ask you to look upon that as the letter of an honest man, a man who is not ashamed of his opinions and a man who does not run away but at once comes forward and answers the criticisms passed upon him. I ask you that it is inconsistent with anything except honesty of purpose. I have read that letter to you at length because it is important you should have on what lines Tilak acted when he was attacked in the first instance by "Justice" and when he wrote that letter of the 22nd June, stating what he did at Poona during the plague. He comes forward in this manly and straightforward way and states exactly what his position is. He states his views about Lord Sandhurst's measures of the plague. Those views were expressed by the *Kesari* and the *Mahratta* in several articles about that time. I shall rely upon this letter.

There is another letter which I do not intend to touch because I have dealt with that before. It is with regard to the shooting incident of Mr. Fagan. (Exhibit **H**). I have shown you whether it is right or wrong that people who did not take sufficient care of the lives of others should be made liable and prosecuted for committing a rash and negligent act. I may observe that in Fagan's case perfect justice was administered, but it is perfectly competent for any one who thought otherwise to say so.

Well, now, the next article is one about which it is difficult to see why it is put in (Exhibit **M**). It is an article about the overcrowding in Bombay. It is very much like what you may read at home with regard to the people from my own country who are accused of overcrowding into Manchester, Liverpool, London, and other large centres. Instead of cultivating their own fields, they go now to follow some trade or profession in those crowded centres, and complaints were heard from several persons who had thought their own wages were lowered by these encroachments. This article is in the *Mahratta*, dated 23rd May 1897. There he suggests, first of all, that before they commenced the work in Bombay the Government should appoint a commission to inquire into it. The only reason why they came to Bombay is to make more money than they did at home. I say this is exactly the same thing that you have in England. Some people speak against it, some approve of it. I can see nothing that preaches sedition or anything of that sort at all.

Well then, we come to the three other articles. They are also in the *Mahratta*. I have been looking at them to see what possible sedition could be in them. They are published on the same day, 30th May 1897. The first (Exhibit **N**) is a sort of a skit upon those who went home during the time of the plague. They are barristers, merchants and others. They make money here and leave this country to enjoy a holiday. What harm is there in saying it? It was perfectly true they did this. And no one can fairly say that he was not justified, living as he was, in

the midst of the plague, passing a skit upon those that had left to enjoy a holiday. I do not see anything else in this article. There is a complaint that they did not take sufficient interest in the people; these complaints are supported by a number of English writers.

Then you come to "An Arms Act for the Baroda State" (Exhibit O). You know very well the controversy about the Arms Act; there was a great controversy even in England when the Arms Act and the Vernacular Press Act were being introduced by the advice of Lord Lytton. You rememeer how one side urged their repeal and how another insisted upon their retention. The Vernacular Press Act was repealed and the agitation was going on for the repeal of the other. It is said in opposition to the Arms Act that the people would not be able to protect themselves against wild beasts in country places, and other arguments, some good, some bad, were used. The purport of this particular article is: "You cannot want to have the Arms Act there because you are their Native Government. Why do you introduce the Arms Act, unless it be to curry favour with the British Government," and the only sentence that is relied on by the prosecution is that which said that "if constitutional methods fail, the time might come when the Natives in British India might have to resort to arms. The words, "if constitutional methods fail" were in italics so as to give them stronger emphasis. This is nothing more than saying that if, after trying all and every constitutional method, no redress was obtained, it might then be needful to resort to force. The other article is about "The Indian Princes in London." I confess I can see nothing objectionable in that. You may see something of the kind in *Truth*, *Punch* or any English papers. I quite well understand that there is a fun made of these Indian Princes who had gone home because they had gone there uninvited. It says it would be better for them to stop at home and do their duty by their subjects.

These are all the articles put before you in order to show Tillak's evil mind, a disaffected mind, a mind which seeks to overthrow the British Government. And I contend they prove nothing of the sort.

I have sufficiently dealt with the prosecution articles. Now to go to the articles connected with the Shivajee celebration. You have, first of all, the history of the movement on the 23rd April 1895 (Exhibit No. 1). The *Times of India* comes forward to sound the note of opposition (Exhibit No. 2). Then there is a lecture of Prof. Karkaria* (Exhibit No. 9), and a reply to him in the letter of M. J. (Exhibit No. 10). Then you have an article about Lord Reay (see Exhibit No. 4). First you have the article of "Shivaji tomb" (Exhibit No. 5). Then you have one article on 4th June 1895 giving the history of the movement and the report of a meet-

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* Here is a slight confusion, due probably to bad reporting, about the sequence of events so far as Mr. Karkaria is concerned. Mr. Karkaria reads his paper on the "Pratapgad Tragedy" before the Bombay Branch of the Royal Asiatic Society on the 20th April 1894. He wrote an article on the same subject in the *Calcutta Review* for July 1894, and published a pamphlet at Poona soon after. In January 1896 he gave a lecture at Satara on the same subject. It is as a reply to this last lecture that M. J. writes to the *Times of India* on Mar 7, 1896 (see Exhibit No. 10). Mr. Karkaria replies the same day from Matheran (Exhibit No. 11), and then there is a rejoinder long after published in the *Times of India*, dated 7th April 1896 (Exhibit 12).—K. G. D).

ting held for the purpose of taking steps to repair the tomb. (Exhibit No. 6.) Then there is another article on the 14th April 1896. (Exhibit No. 7.) The object of the movement is given. It is much liked; you find the same in Principal Sharp's work on Burns. It shows the desirability of cultivating a national character. Both the countries, Wales and Scotland, are undoubtedly loyal, and yet both the countries at the same time endeavour to keep alive the feeling of patriotism amongst the people. Look at page 96. (Reads). And that feeling, we all know, has been roused most successfully. The same case is here. I want to suggest that this movement of celebrating Shivaji festival is not in the least degree caused by disaffection. In that connection let me read you one short passage from Mr. Acworth's Ballads. In the introduction of the book there is written at page 3. (Reads)—"Under British rule the Mahrattas get perfect liberty." If translated in Mahratti it would be rendered as *swatantra*. Therefore they have no cause to complain against British rule. The celebration merely excites those feelings which are considered so laudable by Principal Sharp and Mr. Acworth. Counsel referred to the various articles put in with their respective dates, and said you will remember that the Advocate-General said that we had not called Professor Bhanu to speak as to what words he had used at the meeting. The learned Advocate-General seems to be under the impression that these are not the statements made by Professor Bhanu at that time. Professor Bhanu writes a letter to the *Times of India*, on 8th July 1897. (Exhibit No. 16.) (Reads.) We have got his speech in the Deccan College, and Government knows what he said there. I ask you to note in this incriminated article that he addressed the people, with whom he agreed, on no other point except that of the celebration of Shivaji's festival. [Reads "the work of raising the intellectual," &c., from the last para. of Exhibit 16.] I ask you to bear in mind that expression. He means "intellectually the burden ought to be removed," and you will not wonder at his idea. There is no warrant to say, as is suggested by my learned friend, that the burden refers to the British Government. (Reads.) Professor Bhanu, in his letter to the *Times of India*, does not suggest that there is anything contrary to his principles in this report. Professor Bhanu merely works for the regeneration of his country by its intellectual, moral, religious, social, and industrious advancement. And therefore he implored them to sink ther minor differences and work together in this great cause—this "formidable burden of uplifting his country," that is to say the general regeneration of his country. That was practically the burden of his address. The work of regeneration means the work of general advancement. It does not mean the burden of the British Government. There is one passage I want to refer to, and to which my learned friend referred in order to show that the verb in it, is in the present tense. It relates to the remarks of Mr. Tilak to shut up and burn the thieves alive in your house, which they have entered, if you have no power in your wrists to punish them. This evidently refers to some old story of an old woman. This suggestion has nothing to do with the present times. On the face of it it cannot refer to the British Government. For if we apply it to the present times it will only mean this: "Destroy the British Government and destroy your own country." Is it possible that a man of Tilak's intelligence will give such suicidal advice to his countrymen.

Regarding the passage "God has not conferred *Sanad*," &c., if it was neces-

sary to do so I could have been able to show you that *dilelen* is a participle, that *marlele, dilele,* are participles; *marlele nahi* and *marle nahi* are the same.

I now pass from the letter of 8th July 1897 to the letter of the Secretary to Government with reference to Tilak's memorandum. (Exhibit No. **18.**) We have asked the prosecution to furnish us the memorandum; but they will not produce it for one reason or other; my friend says he had not got it, that our notice was not in proper form. We have couched our notice in a polite form and therefore they say it was not a proper notice and refuse to produce the memorandum. We have got no reply to our memorandum, and the memorandum is not produced.

However, we have put in the memorial sent in, signed by a deputation that waited on Mr. Rand on the 14th of April. It was signed by Mr. Tilak and four others. There were in it a number of suggestions, presumably the same as those put before Government in the memorandum referred to. In the fonrth paragraph it was stated that the suggestions were made in a spirit of co-operation and "There is no opposition to house-to-house search from the people. We only wish it to be carried on in such a way as to create the least annoyance and interference with the customs of the people, and this can be done by securing the co-operation and support of the people." (See Exhibit No. **19.**) It was impossible to show a better spirit than that displayed in this memorandum or to make more practical suggestions to Government. The memorandum was full of sympathy for Government and full of common sense, and had they come to Bombay they could not have got any better suggestions than those given them by the first accused. Gentlemen, you cannot but come to the conclusion that here is a man thoroughly honest and loyal, who has rendered excellent service to Government, unless you believe that you are dealing with a man of wonderful duplicity. And it is impossible for me to believe in such duplicity in Tilak's case.

The article that has been put in with reference to the question whether the Land Revenue (Exhibit No. **20**) ought to be suspended in this year of famine only used arguments which were to be found in the report of the Famine Commission. Whether the cultivators were entitled to this suspension or not was not the question you have to consider. All you have to deal with is whether advantage was taken of the opportunity afforded by the existing distress to urge the people to resist the authorityof the Government. You cannot for a mon ents say that it has a seditious tendency. For the article distinctly called upon the people to send their petitions to the Collectors and through them to Government, and stated that if this was done their grievances would probably be redressed. No more proper advice than this could have been given by the most loyal subject of the Queen. The sum and substance of it was that if they were aggrieved they must petition Government.

At this stage the Court rose for tiffin.

After lunch, Mr. Pugh, continuing his address, said: I will now read to you his articles on the plague policy of the Government. There is nothing but approval of Government in them. I will first take the *Kesari* of the 16th February (Exhibit No. **21**) (Reads a portion of the article), and I say that it was exceedingly moderate. The criticism is extremely fair. What he says there

is in regard to his own people. He believes in segregation. He says there is a Government hospital which will suit the conveniences of their lower classes. But the middle and higher classes must have an hospital of their own. And he advises them to start one. In conclusion he suggests that the plague operations should be carried out in a mild but firm spirit. Nothing could show a better spirit than that. In the next article in the *Kesari* of the 9th March (Exhibit No. 22) he inculcates the same principle, and suggests certain remedies for the proper carrying out of the regulations. The next article of the 16th March (Exhibit No. 23) criticises the policy of Government; states that no mention of the employment of soldiers was made in the Governor's speech. About the complaints regarding soldiers, he says that blame attaches to native gentlemen accompanying soldiers. If they do their duty properly, there will probably be no annoyance from the soldiers. Then there is the next article of the 18th May (Exhibit No. 24) stating that the search-parties will cease from the 20th May. In that article also he advises that the Hindu Plague Hospital should be kept for two months more. No better spirit of a good citizen could be conceived of. The article freely acknowledged that certain measures were due to the goodness of His Excellency, for which they should be glad and be thankful to the Governor. Tilak had really a genuine belief in the goodness of Lord Sandhurst and the excellences of his motives towards the Mahrattas.

Here is a man who has been working heart and soul with Govrenment during the time of the plague. The search parties ceased to work on the 20th May. He was loyal while the people were disturbed and undisturbed. Why should he then on the 15th of June, when quiet was restored, attempt to preach sedition. I rely upon the articles which I have read to show that Tilak had no animus against the Government. It is impossible that he should have written such articles if he had a desire to create disaffection in the minds of his hearers. He would have written offending articles if his object was to lower the Government measures in the eyes of the public. If he had a desire to create disaffection he would have written vehemently about plague, famine and other evils. But he has not done so. No European, I feel quite sure, could have done better to help the Government than Tilak had done during the times of plague. In these articles you have Tilak as being loyal and perfectly independent, blaming the under-officers of Government when it was necessary and when required, speaking harshly to his own men: he is fair in criticising Government measures, and throughout he had genuine feelings as to the goodness of Lord Sandhurst; and that being so, his conduct was perfectly inconsistent with disaffection. There was no insurrection against the British Government. No sane person would have thought of counselling insurrection when he himself wrote in praise of the actions of the Governor.

I will next refer to the series of articles [Exhibit 26 (1), (2), (3)] appearing respectively in the consecutive issues of the *Kesari* of the 8th, 15th and 22nd June 1897. My learned friend said that they were cribbed from Sir Richard Temple's work. It is impossible to write such articles without reference to other works. And if they are compiled at all, I must say that they have been compiled exceedingly well. They show very great ability on the part of the writer; and if you were to look through the whole English press, you will have

a difficulty in finding better-worded articles than these. The first article is about the personal character of the Queen. The writer has the highest respect and admiration for the Queen. The second article which appears in the same issue in which the incriminated articles appear gives a graphic description of the glory and power of the British Empire. The third article has particular reference to the state of India under Her Majesty's rule. It deplores the absence of statesmen, politicians and others in this country. The same sentiments are expressed by many eminent writers. In a paragraph immediately after that he represents the other side of the picture (reads para. II. of the article). No sane person would think of counselling rebellion under these circumstances. The accused has genuine loyalty towards the Queen as will be seen from what he says at the end (reads): "Hence, if after seeing how far the principles of the proclamation have been carried out in forty years, Her Majesty the Queen graciously orders a full execution of them on the occasion of this great festival, not only will she have the credit of laying the foundation of the prosperity of thirty crores of people, but the British Empire will thereby gain more strength and permanency. May God grant (this) and inspire the Queen (Empress) Victoria with such a desire on the occasion of this great festival, and may Her Majesty be spared to carry it out with her own hand—is the prayer of us all. If India has any hope, it is this only, and we pray to God that he may grant long life to the Queen (Empress) Victoria and she herself should fulfil our desire." It is a stirring passage published on the fatal day of the 22nd June, and unless you think it is a lie from beginning to end you must come to the conclusion that the accused is a loyal subject.

The article is merely a criticism of Government. In that Tilak only said the country was not so well off as it was represented to be, and that it was suffering in many ways, and that they ought to get a larger portion of freedom and greater assistance than were given them, and it was in accordance with their legitimate aspirations and ambitions. Only the other day there was an article in the *Fortnightly Review*, against famine, by an eminent Civilian, who said that famine could have been prevented by the Government. It has not applied the Famine Fund to the purpose for which it was intended. In dealing with the Army in India, the writer said, it was much larger than was required for peaceful purposes, and that the British Government ought to make more liberal payments to this country. English editors decried the frontier policy and expeditions with which England was more concerned than India, and it was therefore justly demanded that England should pay the expenditure. When the English editors expressed their views thus, they were loyal, but the moment a man like Tilak expressed a similar opinion, it was sedition; it was disloyalty. If there was any disloyalty, how can you account for the Jubilee article in the paper of the 22nd of June? The real difficulties to which the accused has referred were dealt with by the Chief Commissioner of Assam in his book on "New India." There are complaints about the administration of justice, the proverbial delays of laws, and the enormous expenses in instituting suits; then sentiments about being kept in the sphere of servitude, economical questions affecting the wealth of the country and so on. [Counsel then proceeded to read long extracts from the book, laying particular stress on the opinions of eminnnt statesmen in India, and remarked:] These views are perfectly consistent with the maintenance of

the supremacy of the Imperial Power. The question here is not whether they can be realised, but whether it is not legitimate to hold them. They may be a dream. Take them to be a dream. But it is a lawful dream to hold them.

In conclusion, I ask you, gentlemen of the jury, the majority of which are my countrymen—I ask you to dismiss all the prejudices in this case and consider the case fully upon its merits. And I will say if you will do that, you cannot, as I put it to you, come to any other conclusion but that you have here an honest man before you, who might perhaps have said things, but who never for a moment intended to preach disaffection against Government, and you must remember this. In such cases we must have equal laws. You—the majority of you—who are my own countrymen, I appeal to you to consider this case dispassionately. It is the case of a native to-day; it may be the case of a European, as it has been before and as it may be to-morrow. Therefore, upon that ground—low ground I admit—also, I would ask you to be careful not to allow the law to be strained in this matter and not to convict the man as regards whom you must, I say, be satisfied that no evil intention is shown by the prosecution. I put it to you, gentlemen, that if all the facts had been known before this prosecution was started, this prosecution could never have been proceeded with. It is perfectly clear, it must be clear to you, looking at the matter as men of commonsense and as men of the world, it is a case, as I put it to you, that if the literal translation, which is also an official translation, had been put before the advisers of the Government, they could never have advised this prosecution to take place; they had not these materials before them. They had before them, probably, some translations of Baig which formed the basis of this free translation. It being so, it was very much serious, or, as I put it, very much stronger than the present translation. Again I put it to you that with regard to the telegrams, we do not know what they were. They may have been the lucubrations of "Justice" in the *Times of India.* Had these translations been telegraphed, then I can assure you, you would have never heard the questions asked in the House of Commons, which Sir Ashmead Bartlett and Sir M. Bhavanagri did ask. They asked these questions, as I put it to you, upon entirely wrong information, and these translations never came into being until after the arrest of Mr. Tilak. I do not know how many times applications were made for bail, but Government at that time strenuously resisted the bail, and this they must have done before these articles were considered. I am sorry, and for this reason; for the case having come to be considered by every officer of the Crown, they did not say "We can't go to the jury and ask them to convict Tilak upon materials of this kind." It is for you, gentlemen of the jury, to exercise that discretion, and say there is no case against Mr. Tilak. You will read in the papers that this is a case of the greatest importance, that the eyes of England and the eyes of the world are upon us to see what we are going to do. It is indeed a very important case, and I ask you to consider the matter without prejudice, and make up your minds upon the evidence before you; and it is impossible, under the circumstances, that you should give a verdict of guilty. I do not believe that you can come to any other conclusion. I shall not believe it until I have heard it from you. The responsibility is entirely with you. His Lordship will direct you with regard to the law, but the responsibility with regard to the verdict based on law and facts as to whether this case comes within the law is wholly and entirely with you, and you gentlemen, are alone responsible.

CHARGE TO THE JURY.

GENTLEMEN OF THE JURY,—The two accused, Bal Gangadhar Tilak and Keshav Mahdeo Bal, are here arraigned before you upon two charges. Each of them is charged, in the first place, with having excited feelings of disaffection towards the Government established by law in British India. Each of them is also charged with having attempted to excite feelings of disaffection to Government established by law in British India, and they are charged with doing these things by means of certain articles appearing in a newspaper called the *Kesari* of the 15th June of this year. Before going into any other part of the case, it is necessary to explain to you what was the responsibility of these persons, if any, attached to them, in respect of these articles; and, secondly, we will proceed to consider what is the nature of the offence with which they have been charged. I have directed that copies of this Section 124A should be distributed, and if they have not already been distributed among you, it will be presently done. (The Clerk of the Crown, announcing that they were duly received, distributed printed copies of Section 124(A), I. P. C., to the Jury.) The section, you will observe, relates to the offence of exciting or attempting to excite feelings of disaffection. Under that section it has been held by the Chief Justice of Calcutta, Sir Comer Petheram, that it is not only the writer of the alleged seditious articles, but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to Government, is liable under the section, whether he is the actual author or not, and I entirely agree with him. Sir Comer Petheram has held that whoever uses matter which is seditious in the sense calculated to excite feelings of disaffection against the Government is liable, and it was sufficient that the words were used, whether any active disturbance occurred or not. The question is whether he used printed matter or such words in a newspaper for the purpose of exciting disaffection towards Government. That is what you have to look at in regard to this, whether the accused used the words at all, and, if so, how?

The matter complained of consists of two articles published in the *Kesari* of the 15th June. As to the preliminary question of the connection of the accused with these articles, I will take the case of the prisoner Tilak first. The *Kesari* is a weekly paper, published in Marathi every Tuesday at Poona. It has a considerable circulation, having six or seven thousand subscribers, not only in Poona, but in many other places, including Bombay. This particular issue of the 15th June contained these two articles, and it was sent by post to the subscribers in Bombay and elsewhere. So the paper's publication extended to Bombay. I only mention this matter of publication in Bombay because it gives this Court the jurisdiction to try this case. Sending of the newspaper by post from its office where it is published to any other places constitutes in law the publication in Bombay or any other place to which it is sent. It is not denied by the defence that there was this particular publication in Bombay. It is in evidence that it was posted in Poona on the 15th and reached a subscriber in Bombay on the 16th of June. The prisoner Tilak is the proprietor and editor of that paper, and he is also the publisher.

He has not attempted to dispute that, and he has admitted that; he is also cognisant of the fact that the paper was despatched to various other places. It is further in evidence that before any matter is published in the *Kesari* the proofs are submitted to him. Upon this evidence you would be justified in holding that he is the publisher of this paper, and also the publisher of these particular articles in the paper. He has signed the declaration under the Act of the Legislature passed in 1867, and that declaration is in evidence. The Act requires the publisher of every newspaper to make a certain declaration that he is the publisher of it. The declaration which was made by Tilak some time in 1887 is now in evidence. The law says that that may be taken as a sufficient *primâ facie* evidence that the person signing the declaration is the publisher of every part of any paper bearing a name corresponding to that in the declaration. And in the absence of any evidence to the contrary you will be justified in holding that the prisoner Tilak was the publisher of every article and every word in the *Kesari.* He published it through his servants—and it must be taken as a fact until the contrary is proved, that he authorised these persons not only to print it, but to give it out to the world, and to distribute it in Poona and various other places, among them being Bombay. You will be justified in holding, in the absence of any evidence to the contrary, that Tilak was the publisher, and that he published these particular articles at Bombay also, by causing the paper to be sent to, and distributed in, Bombay, through his agents, on the 15th of June. Of course, gentlemen, I am anxious that you should know that the prisoner has not disputed, but, on the other hand, he has boldly avowed his connection with the paper. He has not attempted to shirk any connection which attaches to him in respect to these articles. So much with regard to the responsibility of Tilak.

Now I turn to the question of the responsibility of the other accused person, Bal, who takes his stand on a different footing altogether. Now, he has admitted in the statement that he has handed over to the Court, that he was the acting manager of the paper in June last. He had been acting for some time in the place of the substantive holder of the office, who had been absent since last October. The second accused was officiating for him. Letters signed by him "For Manager" have been put in. In one letter he describes himself as "Acting Manager." He was head printer also of the "Arya Bhusan" Press, where the *Kesari* and the *Mahratta*, also belonging to the prisoner Tilak, are printed. As the acting manager he superintended the printing of the paper, because he was also acting printer; therefore he was in a position to know what was appearing in the paper; he is not the registered printer, who, you will remember, had gone away from Poona. It is further in evidence, and witnesses for the Crown have told you, what was the practice in the office with regard to the printing matter. He used to receive manuscripts, and he used to make them over to the compositors, and when proofs were handed over to him, he sent them to Tilak. He does not deny that. He is the officiating manager, he is the officiating printer, and he is the person through whose hands proofs ordinarily passed, and he was occupying that position on the 15th of June. Observe what he says in his statement that, although the proofs passed through his hands, it was not his business to correct them. He says he was a paid servant, receiving only Rs. 30 per month. It was not his business to pay attention to

or correct the proofs that passed through his hands, which were corrected by a corrector and then submitted to Tilak. That statement of his is borne out by the evidence of the witnesses for the Crown. The witnesses say that it was not his business to examine the proofs. They were corrected by a corrector. That, in a nutshell, is the evidence of the part taken by the second accused in bringing out these articles. Apparently, the literary matter was not under his control. That being the state of facts, how have you to deal with the question of responsibility? You have to deal with it in this way:—As he was the manager and superintendent in bringing out the matter—which was distinct from having a control over the literary department—as he was the printer of it, you may presume that he was acquainted with what he was distributing and printing. You have to find whether he authorised the insertion of the articles or their distribution. It is a pure question of fact. If you are not satisfied that the prisoner was cognisant of the particular articles, or that he directed, or authorised the distribution of it, then I will advise you to find him not guilty, because you must have regard to the section which requires distinct proof by the Crown against the second accused. You must be satisfied that for printing or using words that were published he was responsible, and that he used those words for the purpose of exciting disaffection. If you come to the conclusion that he knew anything about these articles, then it is a question for you to consider whether you can properly say that he used those words with that purpose in mind. It is entirely for you to consider as to whether you believe his (second accused's) uncontradicted statement that he was absolutely ignorant of what appeared in those articles. But the same does not apply to Tilak. He stands on a different position. I will not take up much of your time on this question. Tilak was the proprietor and publisher of the paper, and he must be taken as authorising everything appearing in the paper. No evidence has been called to refute or rebut that position on the part of the first accused. He was cognisant of what was published in his paper. There is only one word with regard to the second accused. He makes a representation or a suggestion that he has been treated in such a way—and he has every right to complain—that he has suffered hardship in regard to the conduct meted out to him. I will say a few words on this point. It is extremely important for every person when he is tried before this Court, that he should have absolutely fair play, and he has a perfect right to bring to the notice of the Court anything that he considers gives him a cause for complaint. He says that he retained a counsel from Calcutta to appear for him, and that this counsel has not been allowed to appear in this Court. And he further says that this case ought to have been tried in Poona, where the counsel would have appeared as of right. Now, with regard to the hardship of which he complains, what is the real point? Has he truly suffered hardship? The prosecution of both these prisoners was instituted in July. At least the order for the prosecution is dated 26th July. The proceedings began soon after. The accused was committed for trial on the 2nd of August. You will remember that this trial began on the 8th of September. For the selection of his counsel he had ample time between 2nd August and 8th September, considerably more than a month, and during that period he had every facility in the way of engaging his counsel. There is a large Bar in Bombay—a very large Bar— from

which he could have chosen his counsel. It is quite true that the Advocate-General and Mr. Macpherson were retained for the Crown, but in cases of great importance, and certainly in every Crown case, the Advocate-General would naturally appear for the the Government, and it is quite true that the Advocate-General with Mr. Macpherson represent a very powerful combination; but there are at the Bombay Bar advocates who in a case of this kind are fully as capable of withstanding such a combination as any advocates practising in any other Court in India. It is quite true what the prisoner says that he has a perfect right to select his counsel. But the question is, whether he is justified in his complaint? The point is that he has got the whole Bombay Bar open to him. Where is the position of hardship? Has he been treated with injustice? Nothing of the kind. His choice from the Bombay Bar was not restricted. The position is simply this:—Sometime ago his legal advisers made enquiries, and he was informed through them in the most distinct terms that according to the law and the rules which apply to this Court it was not competent for any advocate who was not upon the roll of the Court to appear at the Sessions. The intimation was conveyed to him. It was also clearly intimated that the Court would not as a matter of course accede to any application for any advocate's enrolment for one particular case. The practice of this Court is not to enrol an advocate when he applies for admittance on the roll for the purpose of one particular case. I am not discussing whether that practice is right or wrong. It was intimated to the legal advisers of the accused, who must have known that that was the practice of the Court, and that the Court would not allow without special grounds being shown a departure from the practice. That was before them, and they had every chance of getting perfectly competent advice in the matter in Bombay. Then, all I wish to say with regard to the question of trial at Poona is this: the second accused claimed that the case ought to have been tried in Poona. Mr. Pugh also seemed to suggest the same thing. It is admitted that this paper was published in Bombay and also at Poona, and, therefore, this Court, as well as the Poona Court, had the jurisdiction to try the case. It was entirely within the discretion of the Crown whether they instituted proceedings at Poona or at Bombay, and they were perfectly justified in using that discretion and instituting the prosecution in Bombay, if they considered that the best course in the public interest. It was said that in Poona there would have been a Marathi-speaking jury, who could have understood better than the Bombay jury, the terms used in these articles. But this is a mistake. If the case were tried in Poona it would have been tried only by a Judge, assisted by Assessors. But the Assessors' verdict is not in any way binding upon the Judge, and if the case had been tried there, there would have been an appeal to this Court from the decision of the Poona Court. This course would have been very inconvenient, and it was desirable to have the trial at a more convenient place. Besides, Poona was in a state of excitement. Here we have a calmer atmosphere. This is a most important case. It is the second case of its kind that has been brought before a jury in India, and the first in this Presidency. I merely mention these matters that there may be no misapprehension. Having explained this matter, I wish to press this upon you, that it does not really matter in the least whether Government were justified in their action or not. Whether Government were acting wrongly or injudiciously it does not affect your duty. Your duty consists in giving your verdict in accordance with

the evidence before you. So much for the connection of these two persons and with Keshav's suggestion as to hardship. Having put that aside, I can now deal with the law upon the case, and the evidence in the case. Now before I read to you Section 124A, I will call your attention exactly to what you have to try in this matter.[1]

Now, if you are satisfied that the two prisoners or either of them are responsible for the publication of these two articles in the *Kesari*, the next question is, whether that makes them guilty of an offence against Section 124A of the Penal Code? Did they, or either of them, by means of the articles, excite or attempt to excite in their readers feelings of disaffection to the Government established by law in British India? That is a question of the meaning and effect of the articles, and the intention of the accused in publishing them, and it is entirely and exclusively a question for you to decide. But there is a preliminary question to be considered, and that is, what is the meaning of Section 124A of the Penal Code, and what is the nature of the offence which it makes punishable? That preliminary question is for me to decide. The law requires you to accept from me the explanation of the section and of the offence; and it is then for you to determine upon the evidence before you, whether the facts constituting the offence as explained by me have been established, and whether the prisoners are guilty or not.

Now, I come to deal with the law as contained in Section 124A of the Indian Penal Code, and before I read it, I would point out that there are certain matters which I shall ask you to dismiss altogether from your minds. In the first place, in construing the section I do not propose to discuss the English law[2] of seditious libel, though I have most fully considered the cases to which Mr. Pugh has referred, and the writings of Sir James Stephen and others on the subject. I would point out that the opinion of Justice Stephen could have no bearing on the case, and the explanation which I shall give you is not in any way inconsistent with the best English authorities. In England seditious libel is a common law, misdemeanour and not a statutory offence, *i. e.*, not created by Act of Parliament, but elaborated by the decisions of Judges, and did not correspond with Section 124A of the Indian Penal Code. I have considered the matter carefully, and I do not think that English cases can have any bearing in the matter. I therefore ask you to dismiss from your minds the Trafalgar Square incident, as in India the law applied is the Penal Code.[3]

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[1] After the last sentence of the paragraph the following appears in the version of the *Bombay Gazette:*—According to the Criminal Procedure Code the judge is exclusively responsible for giving the law to the jury. You are bound to take from me the meaning of section 124A, and for which the judge alone is responsible. If I may be wrong, the responsibility is exclusively upon me: it is for me to direct you as to the meaning of the section, and it is for you to decide whether the case comes within the meaning of that section. You must decide and and give your opinion after reading and forming your appreciation of the evidence. You must exclude from your mind what the counsel may have said about the aw.—K. G. D.

[2] One of the reasons given by his l ordship for not discussing the English law was that it would be confusing the jury to do so.—K. G. D.

[3] At this stage his Lordship had also mentioned that in England the Government was differently situated from what it was in India in respect of its political constitution and various other matters.—K. G. D.

Well now, I ask you to look at the section and the way it is worded. It says: "Whoever by words, either spoken or intended to be read, or by signs or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life, or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may added, or with fine." To the above is appended the following explanation:—"Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause." You will observe that the section consists of two parts, first, a general clause, and then an explanation. The object of the explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection, are not to be so regarded. We must, therefore, first consider the first or general clause of the section by itself, and then see how far the explanation modifies it. The offence, as defined by the first clause, is exciting or attempting to excite feelings of *disaffection* to the Government. What are "feelings of disaffection"? I agree with the late Chief Justice of Bengal, Sir Comer Petheram, that disaffection means simply the absence of affection. It must hatred, enmity, dislike, hostility, contempt, and every form of ill will to the Government. Disloyalty is perhaps the best general term comprehending every possible form of bad feeling to the Government. It means everything which indicates hostility to Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment; if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. There are two charges against each of the prisoners, one of actually exciting feelings of disaffection to the Government and the other of attempting to excite feelings of disaffection. It was immaterial whether a person excited these feelings or attempted to excite them. If you are satisfied that he has done so, you will of course find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with *attempting* to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realize another point. The offence consists in exciting or

attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any actual disturbance or outbreak was actually caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance to overthrow the ruler of the country, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope. Lastly, the authority or institution against which it is an offence to excite or attempt to excite feelings of disaffection is "the Government established by law in British India." What is the meaning of that expression? It means, in my opinion, British rule and its representatives and administrators as such—the existing political system as distinguished from any particular set of administrators. The result is that you have to apply this test to the case of each of these two prisoners: Did he, by these articles, try to excite in the minds of the readers feelings of disloyalty or hatred to the Government? Now I come to the explanation to section 124A, and the question is how far it qualifies the section as just explained by me, and whether it supplies you with any other test to apply to these articles. Let us read the explanation again :—"Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection. Therefore the making of comments on the measures of the Government with the intention of the exciting only this species of disapprobation, is not an offence within this clause."

Let us consider each part of this explanation, as we have considered each part of the first clause. Observe first that, as I have already said, while the first clause shows affirmatively what the offence made punishable by the section is, the explanation states negatively what it is not: it says that something "is not disaffection," and "is not an offence within this clause." Therefore its object is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The next and most important point for you to bear in mind is that the thing protected by the explanation is "the making of comments on the measures of the Government" with a certain intention. This shows that the explanation has a strictly defined and limited scope. Observe that it has no application whatever

unless you come to the conclusion that the writings in question can fairly and reasonably be construed as "the making of comments on the measures of Government." It does not apply to any sort of writing except that. It does not apply to any writing which consists not merely of comments upon the Government measures, but of attacks upon the Government itself. It would apply to any criticisms of legislative enactments, such as the Epidemic Diseases Act, or any particular tax, or administrative measures, such as the steps taken by the Government for the suppression of plague or famine. But if you come to the conclusion that these writings are an attack not merely upon such measures as these, but upon the Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people, then you must put aside the explanation altogether, and apply the first clause of the section. In the next place, supposing that you are satisfied that these writings can fairly and reasonably be construed as "comments on the measures of the Government," and not as attacks upon the Government itself, still you cannot apply the explanation unless you believe that such comments were made with the intention of exciting only "such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority." This, you will see, draws a distinction between attempting to excite feelings of "disaffection" to the Government, and intending to excite only a certain species of "disapprobation" of Government measures; and protects the latter only. What is the meaning of "disapprobation" of Government measures as contrasted with "disaffection" to the Government? I agree with Sir Comer Petheram in the *Bungobasi* case that while disaffection means the absence of affection or enmity, disapprobation means simply disapproval; and that it is quite possible to like or be loyal to any one, whether an individual or a Government, and at the same time to disapprove strongly of his or its measures. This distinction is the essence of the section. It shows clearly what a public speaker or writer may do and what he may not do. A man may criticise or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may discuss the Income Tax Act, the Epidemic Diseases Act, or any military expedition, or the suppression of plague or famine, or the administration of justice. He may express the strongest condemnation of such measures, and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers, as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people, then he is guilty under the section, and the explanation will not save him.

The object of the explanation is to protect honest journalism and *bonâ fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from

attempts, whether open or disguised, to make the people hate their rulers. So long as a journalist observes this distinction he has nothing to fear. It seems to me that this view of the law secures all the liberty which any reasonable man can desire, and that to allow more would be culpable weakness, and fatal to the interests not only of the Government but of the people. But now, there are other words in the explanation which we have still to consider. (His Lordship reads the words.) To come within the protection of the explanation, a writing must not only be the making of comments on Government measures with the intention of exciting only disapprobation of them as distinguished from disaffection to the Government, but the disapprobation must be "compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority." What that means is that even exciting disapprobation of Government measure may be carried too far. For instance, if a man published comments upon Government measures which were not merely severe, unreasonable or unfair, but so violent and bitter, or accompanied by such appeals to political or religious fanaticism, or addressed to ignorant people at a time of great public excitement, that persons reading those comments would carry their feelings of hostility beyond the Government measures to their author, the Government, and would become indisposed to obey and support the Government, and if it could fairly be gathered from the writing as a whole that the writer or publisher intended these results to follow, then he would be guilty under the section and would not be protected by the explanation. Observe the nature of this "disposition" which makes the whole difference between a "disapprobation" of measures which amounts to "disaffection" to Government, and a disapprobation which does not. It is not merely "a disposition to render obedience to the lawful authority of the Government." It is a disposition *both* to render obedience and also to *support* the lawful authority of the Government against unlawful attempts to subvert or resist it. And it is a disposition to support that lawful authority against unlawful attempts not only to "resist" it—that is to oppose it—but also to "subvert" it—that is, to weaken and undermine it by any unlawful means whatever. And, lastly, it is a disposition to support the Government against all such unlawful attempts whenever occasion may arise, not only against any particular unlawful attempt proceeding or impending at the time of the publication. I believe that it is an inaccurate reading of this part of the explanation, a too exclusive attention to the expressions about obedience and resistance, and an insufficient attention to other expressions equally important, which has caused some people to misunderstand the whole section, and to imagine that no one can be convicted under it even if he assails the Government itself, and not merely Government measures, unless he counsels or suggests rebellion or forcible resistance.

You will thus see that the whole question is one of the intention of the accused in publishing these articles. Did they intend to excite in the minds of their readers feelings of disaffection or enmity to the Government? Or did they intend merely to excite disapprobation of certain Government measures? Or did they intend to excite no feeling adverse either to the Government or its measures, but only to excite interest in a poem about Shivaji and a historical

discussion about his all gel killing of a Mahomedan general ? These are the questions which you have to consider. But you may ask : how are we to ascertain whether the intention of the accused was this, that, or the other ? The answer is that you must gather the intention of the accused as best you can from the language of the articles themselves. What is the intention which the articles themselves convey to your minds ? In considering this, you must first ask yourselves what would be the natural and probable effect of reading such articles in the minds of the readers of the *Kesari*, to whom they were addressed. If you think that the only feelings which such readers would be excited to are feelings of interest in a poem or a historical or ethical discussion, then you may presume that that is all the accused intended to excite. If you think that such readers would naturally and probably be excited to entertain feelings of enmity to the Government, then you will be justified in presuming that the accused intended to excite feelings of enmity or disaffection. As matter of common sense, a man is presumed to intend the natural and ordinary consequences of his acts : he cannot, speaking generally, say : although this language would have the natural and ordinary effect of exciting feelings of disaffection, I did not, when publishing it, intend that it should do so. But in considering what sort of effect these articles would be likely to produce, you must have regard to the particular class of persons among whom they were circulated, and to the time and other circumstances in which they were circulated. An article which, if published in England, or among highly educated people, would produce no effect at all, such as an article on cow-killing, might, if published among Hindus in India, produce the utmost possible excitement. An article which if published at a time of profound peace, prosperity and contentment would excite no bad feeling, might, at a time of agitation and unrest, excite intense hatred to the Government. Therefore, in judging of the intention with which the accused published these articles, you must first of all consider how such articles would naturally affect the minds of people like the readers of the *Kesari*, at that particular time, the 15th June, in the then existing state of the country and of public feeling. Would such persons at that time and in the circumstances then existing regard the articles as a poem and a historical discussion applying no moral to the British Government here or to the present times, or would they be excited by it to feelings of enmity to the Government ? But in the next place, in judging of the intention of the accused, you must be guided not only by your estimate of the effect of the articles upon the minds of their readers, but also by your common sense, your knowledge of the world, and your understanding of the meaning of words. Read the articles, and ask yourselves as men of the world whether they impress you on the whole as a mere poem and a historical discussion without disloyal purpose, or as attacks on the British Government under the disguise of a poem and historical discussion. It may not be easy to express the difference in words ; but the difference in spirit and general drift between a writer who is trying to stir up ill-will, and one who is not, is generally unmistakeable, whether the writing is a private letter, or a leading article, or a poem, or the report of a discussion. If the object of a publication is really seditious, it does not matter what form it takes. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of

exciting disaffection, just as much as a direct attack upon the Government. You have to look not to the form it takes but to the real object; you have to consider whether the form of a poem or discussion is genuine, or whether it has been adopted merely to disguise the real seditious intention of the writer. Again, in judging of the intention of the writer or publisher, you must look at the articles as a whole, and not to isolated sentences. It would not be fair to judge of the intention by isolated passages or casual expressions without reference to the context. You must consider each passage in connection with the others and with the general drift of the whole. A journalist is not expected to write with the accuracy and precision of a lawyer or a man of science; he may do himself injustice by hasty expressions out of keeping with the general character and tendency of the articles. It is this general character and tendency that you must judge the intention by, looking at every passage so far as it throws light upon this You have heard much discussion as to the exact meaning of various expressions in these articles, and the best way of reading certain passages into English. These discussions no doubt were necessary, and it is important that we should as far as possible exactly understand the true meaning of every word. But it would be a great mistake to let the decision of this case turn upon mere verbal niceties of translation, or discussions as to the best English eqivalents of particular Marathi terms. We must look at these articles not as grammarians or philologists might do, but as the ordinary readers of the *Kesari* would look at them—readers who are impressed not by verbal refinements but by the broad general drift of an article. From this point of view it by no means follows that the most literal rendering of a passage is that which best conveys its meaning in English. What we want to get at is the way in which an ordinary reader would understand the whole article; and hence to gather the intention with which the article was written and published. Were the accused publishing a harmless poem and historical discussion, or were they using the form of a poem and a historical discussion for the real purpose of exciting enmity to the Government? In dealing with this question, as with all others in a criminal case, you must remember to give the accused the benefit of any reasonable doubt, and to give the articles not only a fair but a liberal and generous consideration.

As you will see it is a question of intention. As you have got to get somehow or other to the effect of the articles on the mind of the reader, it is not always an easy thing to do. You may ask, looking at the articles, how is the intention of the articles published by Tilak to be determined, and you may also ask, how can we tell what his intention was in publishing these compositions? You may say, how can we tell whether his intention was simply to publish a historical discussion as regards Shivaji and Afzul Khan, or if it was his intention to stir up under that guise hatred against the Government. There are various ways in which you must approach the question in order to determine what the intention was. You must gather the intention in the best way you can from the language of the articles, and you may also take into consideration, under certain conditions, the other articles that have been put in evidence, namely, the articles about the plague and the Diamond Jubilee, and so forth. But the first and most important index of the intention of the writer or the publisher of a newspaper article is the language of the articles themselves. The first question you must ask yourself is this—

What would be the natural and ordinary effect upon the mind of a reader of the *Kesari* at that particular time by reading the article ? That is what you have got to consider, because, when you get at that, you may frame in your mind an idea of what an ignorant reader of the *Kesari* would think, having read those articles. Then you must consider the next step, namely, that one is presumed to know the natural consequence of his act, and all you have to do is that you have to apply the test in this way. First, what would be the effect of the article on the mind of a man reading the article ? First read the articles and see for yourself how the ordinary readers of the *Kesari* would feel while reading that article, and try to ascertain whether or not it was such as to create a feeling of hatred against Government. What would be the impression left on the mind of any reader of the *Kesari* ? Would it be simply one of interest in the historical discussion about Shivaji and Afzal Khan and so forth, or that there was something behind that historical incident. In order to arrive at the natural and probable effect upon the readers of the *Kesari* you must just go a step further and see whether, *primâ facie*, though not necessarily, there was anything which was likely in all probability to produce an effect which was intended by the publisher to be produced. In considering what is the natural and ordinary consequence of a publication like this, I must impress upon you the most important thing in my summing up, and it is, that you must have due regard to the time, place, circumstances, and the occasion of the publication. When you are considering the likely and probable effect on the people's mind in respect of a publication, you must consider who the people are. In my opinion it would be idle and absurd to ask yourself what would be the effect on the minds of those who read the articles in a London drawing-room, or those who sat reading them at the Yacht Club in Bombay, but what you have to consider is what would be the probable and likely effect on the minds of those readers of the *Kesari* among whom the articles are circulated and read. You have not to consider what effect the articles would have upon Englishmen and upon Parsees, and upon many of the cultivated and philosophical Hindoos. No, you have to ask yourself the natural and probable effect of a writing of that kind on the mind of an ordinary Hindoo of the class of the subscribers of the *Kesari*—Hindoos, Mahrattas, and the inhabitants of the Deccan, Konkan and of that kind. You have not only to consider the class of persons who subscribed to the *Kesari*, but you have also got to consider the conditions and the time, not in the year 1890, or 1891, or 1892, or 1893, or even 1896, but in June 1897, and also the particular state of things at the time when the articles were disseminated among them. Then you have to look at the standing and the position of the defendant. He is a man of influence and a man of importance among the people, and looking at these articles you must ask yourself the question how would readers of the *Kesari* be affected by reading these articles. You must exercise your ow common sense and knowledge of the world and the knowledge of the way in which a man writes when he is animated by a particular feeling. You can form a pretty general notion of what a man is driving at, or what he wants to express himself from a perusal of his writings. You can certainly form an opinion as to the object of the writing, and whether it is inspired by good-will or in meant to create ill-will. It is not very difficult to differentiate between the language of hostility, and the language of loyalty and good-will, and of criticism

and of comment. You must ask yourselves, having read the articles, whether the writer is trying to stir up the feelings of the readers against the Government, or is trying to do something altogether different. You must remember that the prosecution have got to establish against the accused that the construction of the articles which they have put forward is true. In all criminal cases, and whether the charge was that of sedition or murder, or any other offence, the prosecution have to prove their case, and here they have to prove the construction of the articles to show that they were written with the intention of exciting disaffection.

And again, you must remember that there has been some dispute about the correctness of some of the translations that have been put before you. Most of you have got to deal with documents which are in their original form in a foreign language, and indeed there has been a great deal of criticism upon them. I do not intend to trouble you with any criticism of the various renderings put before you. You have heard a great deal about it, and I have no doubt you remember it. There are two translations put before you, one of which has been called a free and the other a literal translation. What I would advise you is that wherever there is no dispute about the accuracy of the free translation, where its rendering has not been challenged, you should be guided by the free translation. It is altogether a mistake to suppose that because a transalation is literal, it is more correct than the translation which is called free. An absolutely literal translation from one language to another may give in the second language an extremely imperfect and really inaccurate idea of the meaning and spirit of the original. These documents have been translated by a translator of the Court, a Hindoo gentleman, whose capacity to translate cannot for one moment be doubted. The accuracy of the literal rendering of the articles by a Hindoo interpreter has not been challenged by the defence, who found fault with the free translation of certain expressions occurring in the article. In the free translation there was not given any absolute literal meaning of the words, but their real genuine equivalents in English. Where there is any dispute as to the accuracy of what is called the free translation, you can look at the literal translation and try to see what the writer and the publisher intended by these articles. Then, again, where there is a conflict of evidence as to the meaning of a particular expression, I would advise you to give, under the usual rule, the benefit of any reasonable doubt to the accused. Before you come to any conclusion you must first of all, in the case of disputed translations, judge what was meant by the context.

I will now come to the articles, but in doing so I wish you to bear in mind the nature of the Shivaji controversy. The first article is about Shivaji, the second article being professedly a report of certain speeches made at the Shivaji celebration. It is not necessary to say much about Shivaji, but there can be no question about his being the greatest and most distinguished Mahratta whose dealings are recorded in history. He raised the Mahrattas from a condition of absolute obscurity and insignificance. At that time there were factions among the Mahomedan rulers in certain parts of the Deccan. He took advantage of those factions with which the Mahomedan kingdom had been rent, and having taken possession of the several hill-forts in inaccessible places he was eventually able to lay the foundations of the Mahratta power for the first time in the history of India. He was not only a great soldier but also a great administrator. Ac-

cording to some of the English historians, he was a man of whom any nation would be proud, especially the nation which he had elevated out of obscurity as a soldier and a leader. (His Lordship, after referring to several historical incidents[1] relating to Shivaji, proceeded to remark.) I have gone into the history of Shivaji's exploits in order that you may realize the position of the man who is the hero of the incriminated articles. It was in the year 1885 that it was complained that the tomb of Shivaji at Raighur was out of repair, and though it is true, as the Advocate-General said, that Shivaji after his death was burnt, there is no doubt that his ashes were buried at Raighur, and the place is by tradition known as Shivaji's tomb.

The fact that the tomb was out of repair was mentioned by the *Kesari* paper, and complaints were made on the subject. Lord Reay was at that time Governor of Bombay, and he appears to have taken some interest in the matter, and gave a small grant for the repair of the tomb. Nothing further was done until the year 1895, when we find another mention of the matter in the *Kesari*. There had, however, been mention of it by other persons before it was started by the *Kesari*. An English author, Mr. Douglas, wrote a book, in which he, to some extent, reproached the Mahrattas for having forgotten Shivaji. This being so, the *Kesari* did not start the movement. It simply took it up long after it had been started by other persons. It was said that the tomb had again been allowed to get out of repair. There was an article in the *Kesari* reminding India and the Mahratta public of the memory of the national hero, in more or less reproachful terms. Then came a small subscription from a student, and other subscriptions were invited. In 1895, soon after that article appeared in the *Kesari*, there appeared an article in the *Times of India*, which I need not read, but the whole point of which was that it was unnecessary to make a fuss, that the agitation was uncalled for, as all that was needful in the shape of repair had been done. I do not know whether or not Mr. Pugh was right when he said this opposition gave an impetus to the movement; but I daresay this may have been the case. Whatever the reason, the matter grew in interest, and the project received the support of persons like Mr. Justice Ranade. A big meeting was held, at which resolutions were passed for the further repair and maintenance of this tomb and a large sum of money was collected. So far as it was a question simply of the repair of the tomb, there was, I think, nothing beyond that to call your attention to. When we come to 1896, it seems to have gone further. The movement which first originated in a desire to repair and preserve the tomb, now became a movement for the commemoration of Shivaji by a sort of demonstration or festival. Now I am anxious to tell you that up to that time there was nothing necessarily objectionable in the movement at all. It is for you to consider, but it does not strike me that there was anything objectionable. The Mahrattas and Hindoos are perfectly entitled to celebrate the memory of Shivaji in any way they think, if they do not overstep the mark.

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[1] His Lordship referred to the attacks of Sivaji on the English factories of Rajapur and Surat and to his commercial treaty with them of 1674, and pointed out that the writer of the poem was not correct in saying that Sivaji spared the English as a matter of grace. Does not this twisting of history show a desire on the part of the poet to extol his hero at the expense of others rather than any seditious intent?—S. S. S.

Now there is another thing which is closely connected with this matter, and in regard to which we have heard a great deal, and that is the controversy respecting the murder of Afzul Khan. I will remind you briefly of what the historical incident was. You must bear in mind that all that is in dispute is what really occurred. There is no doubt as to what English historians say about the matter. When I say English historians, I refer particularly to Grant Duff's "History of the Mahrattas," which has been quoted more than once in this case. You will recollect that Shivaji was nominally a subject of Bijapur. On one occasion a Bijapur force was sent against him, headed by a Mahomedan general called Afzul Khan, who brought his army to the neighbourhood of Wai, which, as you know, is close to Mahableshwur. Shivaji and his troops were at Pertabgarh, a fortress some few miles off, also near Mahableshwur. Well, the story is that Shivaji sent ambassadors to Afzul Khan representing that he was submissive, contrite, and repentant, and having rebelled against his master's court, he was willing to surrender himself. At all events he sent humble messages to Afzul Khan, who was persuaded that he was very much frightened and was willing to surrender. Consequently Afzul Khan sent as an envoy to him about the terms of submission, a Brahmin called Gopinath Pantoji. This man came to fort Pertabgarh, and Shivaji succeeded in corrupting him. He went to his tent at night, and represented that as he was a Hindoo servant of a Mahomedan master, Afzul Khan, they should ally themselves for the purpose of protecting the Hindoo religion against the Mahomedan's power. The story is that by persuasion and argument Gopinath was won over, and he then went back to Afzul Khan, representing that Shivaji was in a great fright and ready to make submission, provided he would go personally to see him to reassure him. Shivaji having asked for a peaceful conference with Afzul Khan, prepared for it by laying in ambush numbers of his troops all around, and, what is more, armed himself, put on chain armour under his clothes, and fastened to his fingers of the left hand a steel instrument with sharp points. Afzul Khan came to the appointed place, and at Shivaji's request he came more or less by himself without many soldiers. While Afzul Khan and Shivaji were in friendly embrace, Shivaji plunged into Afzul Khan the steel hooks attached to his fingers, and in that way murdered him, while the troops which were in ambush fell upon the followers of Afzul Khan and defeated them with great slaughter. That is the story of the assassination of Afzul Khan as told by English historians. It may be correct or it may not. I do not know this and cannot say.

In 1894, a gentleman called Mr. Karkaria, who interested himself in historical researches, gave a lecture on the murder of Afzul Khan. He discussed the question to what extent Shivaji ought to be condemned for the act. The purport of his lecture was to justify Shivaji to a certain extent, and to contend that Gopinath Pantoji was not a servant of Afzul Khan. He also said that what Shivaji did was done for the purpose of self-defence, as Afzul Khan would have murdered him if he had not murdered Afzul Khan. We have to consider how far such a discussion is justifiable. I see no reason why a person should not discuss in a proper moderate way the question whether the assassination was justifiable. But although these are subjects of legitimate comment and discussion, you will readily recognise that they are rather delicate subjects for a man of importance,

a leader of the people, that is to say, he ought to be careful as to the spirit in which they are discussed in a mixed audience.[2] It is one thing to discuss it amongst a number of philosophers; it is another to discuss it amongst an ignorant mob. This question, as to whether Shivaji murdered Afzul Khan, and whether that murder was justified, is delicate in that sense, and although in a proper way discussion does no harm, and may be very interesting, they are topics, which men under favourable circumstances may very easily twist. It is quite legitimate for Mahrattas to take pride in Shivaji and discuss his exploit, but bearing in mind that he was a great Hindu ruler, and that Hindoo rule was overthrown by the British, the subject is a delicate one. It obviously lends itself to orations which might inflame people to seek to regain the state of independence they had under him; that might soon be made a burning topic, and therefore it behoves people to be very careful how they deal with a subject of that kind. You must consider whether it was discussed in an innocent way, or whether he had any intention of dealing with it in a dangerous way. In this connection I may call attention to the article named "Hero-Worship." I may say at once that I do not think there is anything objectionable in it, as it stands by itself, and without reference to the articles which may be regarded as throwing light on the policy of Tilak. As Mr. Pugh said, this article is on the same lines as the essay of Carlyle and points out the great advantage to the community of venerating the memory of its heroes. The article states that hero-worship in India has disappeared since the overthrow of the Native *Raj*. All that is put in language to which I take no exception; but it shows how delicate the subject is. A man who is a leader of the people should be very careful in writing on hero-worship when he comes to compare the present state of things with the past. The article on hero-worship shows how easy is the transition from the one topic to the other. And so in regard to the question of the extent to which Shivaji was morally justified in killing Afzul Khan. There can be no objection to this being discussed at the proper time and place. The question of the justification for political assassination has been discussed for hundreds of years, and may be discussed for hundreds of years more. People may and do also discuss whether the ordinary rules of morality apply to great men. I belonged, when at Cambridge, to a very famous debating society, which prided itself upon regarding every question as an open one, and if any member had been shocked if it was proposed to discuss the question as to whether political assassination was justifiable, he would have been regarded as unfit to belong to that society. We did not take for granted anything which would stand in the way of free discussion. There is no objection to such discussion, provided you confine it to the right people. You may discuss, if you like, whether private property is a blessing or a curse, and whether anybody ought to have any property at all. But if you discuss the subject to an excited mob who are hungry or starving in the neighbourhood of a baker's shop, it becomes most inflammable and becomes a subject in regard to which every word should be weighed, and the expression of any opinion contrary to the ordinary morality would be in the highest degree blameable. So with regard to political assassination. To discuss that at a meeting of philosophers or

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[2] Mr. Tilak was not arraigned for discussing the subject at a meeting of a mixed audience, but for publishing a report of the speeches in the *Kesari*.—*K. G. D.*

students or even of ordinary men of the world is one thing; to discuss it in a mixed crowd of people or to put it in a public newspaper is another thing altogether. I have shown that up to 1896 everything was fairly peaceable, and no particular excitement prevailed, so far as can be gathered from the evidence before us here. The discussion of Shivaji was not to be objected to so long as ordinary times prevailed and circumstances were favourable. But when the times are exceptional it becomes a more serious matter, and we have to scrutinise most carefully the intentions of people under that circumstance. The state of things in 1896 did not continue. We know quite well that famine appeared in the land, and spread over a vast area of the country. Plague, which commenced first in Bombay, spread to various parts of the country and to Poona. Great distress naturally followed in the wake of famine and of plague, and Government had to come forward and deal with plague as well as famine. It had to adopt measures appropriate for suppressing the plague, which had led to the goods of this country being boycotted all over the world, and those measures being opposed to the sentiments of many of the people, the necessary interference with their domestic habits created great excitement. Government had to take steps which were unpopular, and especially had to resort to segregation, separating persons suffering from the disease from persons not attacked. In addition, to find out cases which had been concealed, house-to-house visitation was resorted to in order to discover concealed cases of plague, and in Poona it was deemed necessary to employ British soldiers to form the search parties. I do not wish to question in the slightest degree whether this was a necessary measure, or not. I am only reminding you it was adopted, and an inflamed state of feeling was the result. Amongst a considerable portion of the people accusations were made against the British soldiers to the effect that they had insulted women and committed other deeds, in regard to which no evidence, so far as I know, has been forthcoming. The result was what you would expect amongst people of that kind—easily alarmed and suspicious—and they regarded the measures taken as an unwarrantable interference in their domestic affairs. It was a very difficult position both for the Government and people. The inevitable result was friction and a state of tension and excited feeling that went on for a considerable time and culminated in the murders on the night of June 22 of Mr. Rand and Lieut. Ayerst. The officer in Poona who had charge of these operations was abominably murdered. I mention that simply to show the state of excitement which existed at that time. I do not wish to suggest in any way that there is the relation of cause and effect between either of those articles and that abominable murder. The Advocate-General said he could not prove that these murders were caused by these articles, and for that reason I ask you to put that idea out of your minds. But what is clear is that a state of feeling was so excited as not to be equalled by anything that had happened for a long time past.

The prisoner Tilak was in Poona or its neighbourhood at the time and knew perfectly well the state of feeling which existed. It therefore behoved him as a man of influence and as leader of the people at a time like that to be especially careful as to what he said in regard to the relations between Government and the people. This was a most important point for the gentlemen of the jury to consider, for unless they bore in mind the particular conjuncture at which these articles

were published, they would not arrive at the truth in this enquiry. They must have regard to the time, manner, connection, and, above all, the class of readers to whom the articles were addressed. Coming to deal with the first of the articles complained of, that called "Shivaji's Utterances," the learned Judge said that he would put before them, to the best of his ability, the interpretation put on the article by the Advocate-General, and also try to put before them the arguments for the defence. The Crown said the object was to draw the sharpest possible contrast between India as it was in Shivaji's time and India under the British Government, to the greatest possible disadvantage of the latter. It alleged that under Shivaji every sort of blessing prevailed of virtue and courage, the Brahmins were protected, cows were protected, and everything was done which a Hindoo or Mahratta would wish to be done. The idea is: "Look on this picture and on that." It held up to admiration and gratitude the condition of the country in Shivaji's time, and then represented him as asking what was the result of all he had done, now the British Government was in power? Under the British Government it is ruined, and not only ruined, but the particulars of the ruin are set forth in such a way as to incite the utmost possible prejudice, race prejudice, religious prejudice, every kind of prejudice against the British Government; that was in a concentrated form the case for the prosecution. The case for the defence was this. In the first place, that the article was a poem and they must not too rigidly construe poetic expressions. The object of the poet was not to run down the British Government or incite any enmity to it, but merely to seek the improvement of the people, to point out what were the blessings under the rule of Shivaji, and to show how they had fallen from their high estate. The suggestion to the people was to seek to remove the grievances which had accumulated by representation to the proper authorities. The grievances referred to were of the character of ordinary criticism of the administration, such as might be found in any newspaper in England or in India. This was briefly the case for the prosecution and the case for the defence, and he would now read to them the poem with a view to seeing how far these arguments, either the one way or the other, would be accepted by the jury. In reference to the words "foreigners are dragging Luxshmi by the hand by means of persecution," a great deal of dispute had arisen as to whether the last word was properly rendered "persecution" or whether it meant "harassing." He did not think it made very much difference which word they took, and he advised the jury if there was any doubt in their minds to give the prisoners the benefit of it by accepting the translation as harassing. In any case it meant that the wealth of the country was being taken from it. Mr. Pugh had contended that the writer was only complaining of the taxation of the country and was saying no more than a great many newspapers when they criticised extravagance in connection with military expenditure, and so forth. He would point out, however, that no particular measure was referred to, and the charge was brought against Government that in this time of scarcity, famine, and distress they were taking wealth out of the country. There was no objection to newspapers writing articles upon the expenditure of the country when the object of the writer was to obtain some measure of financial reform, but they must take this reference to taxation in connection with everything that followed and also with the fact that no particular taxation was referred to. They must

take it in connection with all the other topics and references in the article in order to judge of the object of the writer in introducing it.

The next passage with which we have to deal is the one :—" Along with her plenty has fled and after that health also. This wicked Akabaya stalks with famine through the whole country. The relentless death moves about spreading epidemics of diseases. Say, ye, where are those splendid Mavlas, my second lives, who promptly shed their blood on the spot where my perspiration fell. They eat bread once a day, but not enough of that even. They toil through hard times by tying up their stomachs to appease the pangs of hunger." This comes after the passage dealing with the interception of the wealth of the country by foreigners, and the desolation and ruin of the country by plague and famine is referred to. But there is no necessary allusion here to the British Government, and you must take it in connection with the rest of the poem. The contrast still remains here ; in the time of Shivaji there were these splendid Mavlas in whom Shivaji trusted, but now they are reduced to this miserable pitiable condition. How does the article go on ?—" O people, how did you tolerate in the *Kshetra*." I think there is good ground for thinking that " endure," is an accurate reading of the word in the original freely translated as " tolerate," so they would take it as meaning " endure." Where there is a doubt as to the meaning of a word we must, in common fairness, give to the prisoner the benefit of the doubt. The word " tolerate" carries with it the idea of the power to overthrow and of restraint and so forth, whilst " endure " does not necessarily perhaps convey that meaning, so we will employ the word " endure " in this passage. The article would then read :—" O people, how did you endure in the *Kshetra* the incarceration of those good preceptors, those religious teachers of mine, the Brahmins, whom I protected, and who, while they abided by their own religion in times of peace, forsook the darbha in their hands for arms which they bore when occasion required." There you have, as the next item in this general desolation, what ?—The incarceration or the imprisonment of Brahmins. Shivaji, said the writer, protected the Brahmins, nowadays they are imprisioned. What does this mean ? The Advocate-General has put in evidence the article in the *Kesari* of 1894, dealing with an incident which happened in the town of Wai when certain Brahmins were sent to prison after a criminal prosecution There was disturbance at Wai in connection with some Mahomedan mosque and music played by Hindoo processionists. I do not know the details. At any rate there had been some disturbance, and a prosecution was instituted, in which the Magistrate or Judge who tried the case came to a decision adverse to the Brahmins, and punished them. Mr. Pugh said there was no suggestion in this passage, as put forward by the prosecution, that Brahmins should be above the law, and not sent to prison, but that it was perfectly legitimate for any person to criticise the decision of a Court of Justice, and to say in an article in a paper that any particular sentence is wrong. This also is perfectly true, but here again the whole question is whether this statement appears in this list of items of desolation in such a way that you can reasonably compare it with the articles with which Mr. Pugh deals. The statement is that Shivaji protected the Brahmins, and that under the present regime they are persecuted and put in prison. It is for

you to consider whether what is there contained is not an objection to the imprisonment of all Brahmins as such, and holding it up as a grievance to Hindoos that during the time of Shivaji Brahmins were protected and under the British Government they were imprisoned. What can be the object of putting that in a string with all these other topics? If this was made the subject of a separate article, without all these accompanying items, and being lumped up with this tale of desolation which is contrasted with what prevailed under native rule, there would be a great deal of force in the contention of Mr. Pugh, but when it was mixed up with the other grievances of foreigners taking away the wealth of the country, you must consider with what object it was done. Why was this extremely delicate and inflammatory topic with others equally inflammatory disseminated at this particular moment? You must consider these articles as a whole, and ask yourselves whether the publisher or the writer must not have known that any ordinary Hindoo or Mahratta would naturally have a strong feeling against a Government which had imprisoned the Brahmins.

Now let us turn to the next passage—"The cow, the foster-mother of babes when their mother leaves them behind, the mainstay of the agriculturists, the imparter of strength to many people, which I worshipped as my mother, and protected more than my life, is taken daily to the slaughter house, and ruthlessly slaughtered there." Here again it is perfectly true that the law will never interfere with any man who writes articles to say that cows ought to be protected. It has often been done, and English people have written to the same effect that, having regard to the feelings and sentiments of the Hindoo about the cow, it ought to be taken into account by the Government so as to prohibit its slaughter altogether. Can you say, however, that this is a point which has been argued here? Has it been argued, or has it been strung upon a string of similar topics in such a way as not to appeal to the reason but to the passions of the people, whose passions were then inflamed upon that as upon a number of other things? What connection is there between the preservation of the sacred cow and the unjust acquittal of the British soldiers charged with offences against natives, except that both are subjects upon which enmity can be very easily aroused against the British Government? That is what you have got to ask yourselves. Of course, if you can find any other object in connection with all those things together, and the particular time and the particular circumstances with which you have to deal, you must prefer it to any criminal object unless you have no doubt upon the matter. At the present time nothing suggests itself to my mind as to why all these topics of prejudice were accumulated at that particular moment. I do not see any discussion at all.

The following sentences appealed to the feelings and sentiments of quite another class. They are three in number, and all are inserted in inverted commas. They are "He himself came running exactly within the line of fire of my gun. I thought him to be a bear;" "Their spleens are daily enlarged"; "How do the white men escape by urging these meaningless pleas?" These are references to those unfortunate cases which, as every one knows, occur from time to time in which an Englishman, generally a British soldier, is tried for murder or an assault on a native, cases in which the defence is that the whole thing was an accident and a slight blow only was intended, but, owing to some disease of the spleen, the

consequences had been fatal ; and the sentence " He himself came running within the line of fire of my gun," has been referred to by the Advocate-General, who put in an article from the *Kesari*, which explains what that reference means. It seems that a gentleman, named Fagan, who was out shooting some years back, fired at a woman who was one of the beaters, crouching amongst the bushes, and killed her, and his plea that the whole matter was an accident was accepted. The article in question said that although this was done by a mistake, still this was a mistake which ought not to have been made, and that under a certain section of the Penal Code this was an offence which could have been punished by two years' imprisonment. Mr. Pugh said this is a subject which is discussed every day, and the words in the incriminated article are "This great injustice seems to prevail in these days in the tribunals of justice." It is quite permissible to comment on the proceedings of a court of justice, and to say that foreigners are acquitted who ought not to have been acquitted, and a writer can say this with perfect propriety without bringing himself within the terms of Section 124 A. But you must look at the context. Why was this particular statement put in? There is nothing said in the way of criticism of a rash and negligent act such as is dealt with in the *Kesari* article of 1894. This is put forward as one item in the general list which makes up the ruin of the country following upon the state of things Shivaji left behind him. You will take this as strung together with the other remarks upon imprisonment of the Brahmins and the slaughter of the sacred cow. Can you deal with this in the same way as if it had been made the subject of a separate article, and was written at the time when Hindoos and natives generally were not in an inflamed and excited state? Must you not take it rather as forming part of the whole, and one of the parts which throws light upon the object of the writer in saying all these pleas are groundless and all these people escape?

We next come to the passage—" Could any man have dared to cast an improper glance at the wife of another ? A thousand sharp swords would have leapt out of their scabbards instantly. Now, however, opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs, how do you brook this? Get that redressed." In regard to the words " Get that redressed," there has been a good deal of discussion. The word used in the original is *dáda*, and the discussion has been as to whether it means redress by force, or redress by peaceful representation to a higher authority. The Oriental Translator says to his mind the word necessarily implies the use of force, and excludes the idea of a peaceable representation, but Tilak, who was allowed to give his own explanation, said exactly the opposite, and that the word would necessarily exclude the use of force. In Molesworth's dictionary two meanings are given for the word, the first " complaint, representation," the second " redress of grievances," and nothing is said as to the way in which redress is to be obtained. I have another dictionary of the year 1829, in which it is suggested, in an obscure way, that redress by *dada* was peaceful redress by way of some kind of constitutional representation. You have these two meanings given for the word, and you must choose between them. The only test I can suggest is the one I suggested. Look at the context, and see whether it is probable the writer meant redress by force of arms, redress by one's own effort, or redress by means of a peaceable representation to the higher authorities. Now, look at the

end again, and see what the sense of it is. The question is one of insults to women, a delicate topic anywhere, and a delicate topic here, particularly at a time when this charge is made amongst the alleged grievances of the people of Poona that women are insulted, or liable to be insulted during the plague inspections. These words suggested that in the time of Shivaji, at these insults to women a thousand swords would have leapt out of their scabbards, in other words, that they would have been avenged by force, whereas now "Opportunities are availed of in Railway carriages," and "women are dragged by the hand." Then follow the words "you eunuchs," or cowards. "Get that redressed." It has been contended on behalf of the defence to show that the real meaning is to make a representation to the superior authorities. But admitting that, why call them cowards and why refer to a thousand swords? "You cowards, make a petition to the Government." Why does he call them cowards if that is all he wanted them to do? It does not require heroic courage to present a petition to Government. When you call a man a coward, and remind him that in days gone by, the way to avenge these insults was to draw the sword, is it likely you would mean that he should present a petition? Is it likely? You must bear in mind there is a real ambiguity in the word standing by itself, but in trying to arrive at what was meant, you must take it in connection with all this talk about cowards, and the drawing of sharp swords. All these things have to be considered, and considered with the greatest attention, in deciding the meaning of a word like this, and you have to consider whether it is reasonable or likely that when he says "you cowards, why do you let a woman be insulted? Get that redressed," he means "go to the Government with a complaint."

Now we come to another item altogether, the sentence in which it was suggested that native princes are deprived of their powers. These sentences are in inverted commas. Somebody is supposed to be speaking, and it is difficult to say who is the speaker. The words are—"'He is mad. Lift him up and send him at once on a pilgrimage.' 'He is fond of pleasure. Deprive him of his powers, saying that it would be for a time only.' This is the way in which royal families are handled now. What misfortune has overtaken the land? How have all these kings become quite effeminate like those on a chess-board? How can I bear to see this heartrending sight?" Here it looks as if the British Government was supposed to be speaking the words in inverted commas, and the article deals with the relations betweeen the Government and the native princes. It refers to particular reasons given for depriving native princes of their powers. This, again, is a subject upon which prejudice is likely to be caused and has been caused. The people of India are much attached to the native princes, and here the suggestion is put forward that it is part of the policy of the Government to deprive these princes of their powers on empty groundless pretexts. Mr. Pugh said what was perfectly true, that exception had been taken in England to the way in which native princes have been deprived of their powers, and the conduct of Government has been adversely commented upon. Further, that this was a poetical form of saying the Government ought to state openly their grounds for acting in this way, and depriving the princes of their powers. If you look at it more closely, you will see there is nothing about stating their grounds and there is no particular case discussed, but there is a general statement that royal families are being

handled in this way. It is for you to consider what could be the object of associating this particular item, this particular topic of prejudice with all the other topics which go to make up the sum total of the misery which exists under the British Government, and which did not exist in the time of Shivaji. These remarks on the Indian princes refer directly to the British Government, and it is difficult to say what object it can have been written with except the same object as the other topics of prejudices which make up the aggregate dealing with these delicate subjects.

I will read the last portion of the article now. "I turn (my) glance in another direction after telling a brief message. Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets. Tell them 'How have you forgotten that old way of yours, when with scales in hand you used to sell (your goods) in (your) warehouses?' (As) my expeditions in that direction were frequent, it was at that time possible (for me) to drive you back to (your own) country. The Hindus, however, being magnanimous by nature, I protected you. Have you not thus been laid under deep obligations? Make, then, your subjects, who are my own children, happy. It will be good for (your) reputation if you show your gratitude now by discharging this debt (of obligation)." The reference "over, whose vast dominions the sun never sets," was a complimentary and usual reference to the British dominions. It was possible, "when with scales in hand you used to sell goods in your warehouses" had reference to the small factories belonging to the English at Surat and other places in the early days, which Shivaji might at any time have destroyed. The reference to the debt of obligation was that Shivaji laid the British under obligation by protecting them, but the British had not discharged their duty and had left it undone. The greater part of this reference could have no meaning at all unless it were that the Government had not done what it was there exhorted to do, namely, to make the people happy. Does not this article draw a contrast between the time of Shivaji, when the people were happy, the Brahmins protected, and the cow regarded as sacred, whereas under British rule the Brahmins were imprisoned, the cow allowed to be slaughtered, and the native princes had their independence interfered with under frivolous pretexts? Mr. Pugh had suggested that in this last paragraph a suggestion was made that these things ought to be put right by a petition to Government or a representation of some kind, but he did not see anything which necessarily referred to a petition by the people. This was a message from Shivaji to British Government, and as he reminded the English of the benefits they received from him, the allusion was placed beyond doubt. Now, he had gone through the whole article, and the jury had to see what the writer was driving at in accumulating all these items of grievances which he called the ruin and desolation of the land. Was it, he asked, his object to show that the British Government ought to be hated, and that he wished his readers to hate it? If these things were calculated to make the British Government hateful, the jury might take it the writer meant to make the Government hateful. The jury would remember, too, that at this time there was the feeling about the plague, the examination of the houses, the soldiers' visits, and the allegations as to the treatment of the women, and this article was sent forth amongst the Hindoos and Mahrattas in which were compiled in one concentrated form all things which, of late years, had been known to

create bad feelings between the British Government and natives. It was for the jury to consider whether the publisher of this paper meant to say plainly to the people that Shivaji made the people happy, whilst the British Government failed in its duty to make them happy ; that Shivaji protected the sacred cow, whilst the British Government allowed it to be slaughtered ; that Shivaji protected the Brahmins, whilst the British Government allowed them to be put in prison ; that under Shivaji the honour of women was protected, whilst under the British, women are assaulted in railway carriages ; and that Shivaji was a native ruler, whilst under the British, native princes are deprived of their powers upon frivolous pretexts.

(At this stage the Court adjourned for tiffin.)

After tiffin his Lordship continuing said : Gentlemen, I have finished now what I had to say with reference to the first article. Before I come to deal with the second, I must remind you that it was published in the same issue of the paper. In considering the intention of the second article, you have to put it side by side with the intention of the first article. If you take it that the first article is published with seditious intention, that is to say, with intention to excite disaffection by means of utterances of Shivaji, then you will be fully justified in holding that the second article also comes within the section. Now, before I discuss the second article, I will do as I did in the first case and will give a summary of it. The case for the Crown is that under the disguise of a discussion of historical questions, seditious matters were introduced in the article. The alleged meaning of the article is given thus : that the Mahrattas and Hindoos are discontented. They are asked to strive for unity by putting aside all mutual dissensions for the purpose of regaining the lost freedom of the country, and for that purpose minor dissensions are to be sunk. With that end in view a justification is sought, and no blame is attached to any one who seeks even by assassination to attain that end. They are told that political assassination is no crime, and that they have to recover their lost independence by violence. When they take Shivaji's and Afzul Khan's story in connection with this sentence, the meaning of the reference to French Revolution is that they have to strive "for our independence, and if any extreme measures are necessary don't put obstacles in the way of any one striving to get it." One thing required for that particular purpose is unity. "Don't worry other people with your scruples." That is a sort of description which in this story of Shivaji and Afzul Khan is introduced. Shivaji did not kill Afzul Khan for personal good, but for the good of his country. He was justified by the purity of his motive, and so they must not be scrupulous about their means. They had to secure lost independence. I take this to be the very essence of the case for the Crown. It is that the British Government is held up as an "intolerable burden," not necessarily to be overthrown at once, though that aim is kept in view. If that is the correct construction of the article, then you will probably bring it within the Section 124A. This is the case for the Crown, but what is the case for the defence? The defence says that it is all imaginary, and that the whole object of this article is simply a historical discussion. The main object of Professor Bhanu and the other people was simply to keep in continuation the discussion started some years back. It was an interesting topic, and the discussion was whether Shivaji did assassinate Afzul Khan and whether

ordinary rules of morality applied to such transaction so as to justify the condemnation of Shivaji. That is the main object. The defence put it that there is no moral to be drawn against the British Government, and that it is merely a a reference to the past. That there is nothing against the present British Government, it being directed against *mlenchhas*, that is to say, Mahomedans, and that it is absolutely a historical discussion. Then there is another object intended in this lecture, in connection with the dissensions of the parties existing in Poona. These persons were leaders of the native community, who were divided among themselves and were thus standing in the way of progress. It meant, say the defence, an exhortation to bring about unity between them, and it was not intended to recover the national independence, but to raise the intellectual and the moral level of the people. I will just put before you how these two cases stand. You have to read these articles. Are they really trying to persuade the people that anything is justified against the British Government? I do not know how this question can be answered except by the exercise of common sense and your knowledge of the world. You have to consider the state of the mind in which the people to whom they were addressed were placed at Poona, how their feelings were towards the Government, and how their minds were turned with the existing state of plague, and how these articles, according to the view of others, would affect the people. I shall take care not to say anything that may tell one way or the other. The festival was held early in June. You must bear in mind that a great deal of extraneous matters were introduced while reciting the Puran. It was followed by a sermon, then there were sports. Various representations as to what various schools should do were considered. This is a very legitimate thing, but you will find a great deal of unnecessary introduction which was really meant to show the back ground. Professor Pranjpe had, in the middle of his speech, said, "Discontent is the root of prosperity." It is for you to say what meaning it bears. Mr. Pugh rightly said that the reading of Puran sermon was the subject which anybody was entitled to discuss. He put in evidence passages from the Sanskrit translation by Professor Max Müller in which either these lines or words appeared. You have to see whether it tends to secure co-operation is meant to unite the people. Take the article as a whole to see whether it falls in with the story told by the prosecution or by the defence. The remarks about discontentment may have been made either innocently or seditiously. That depends upon the context of the article as a whole. Then comes the discussion by Professer Bhanu on the killing of Afzul Khan. There is a report how the Professor has refuted the charge English historians made against Shivaji Maharaj. Well, then, having argued that English historians have given an incorrect view, he adopts another argument. He discusses, supposing Shivaji Maharaj was the first who struck Afzul Khan, what right has any writer to call that act a murder? There you have an indication that no blame attaches to Shivaji for political assassination. He discusses how English writers had the audacity to apply to Shivaji the same rules of morality which applied to the people who were inferior to the Maharaj. Here I speak to remind you what I said before. The question is whether a man has a right to single a theme out as exception from the general code of morality? People are told that murders are justified under certain circumstances. What effect it produces on the hearers depends much upon the commonsense and

self-control of the hearers. So it is a sort of case in which a man very easily crosses the line. In considering what effect it is likely to produce you have to consider the state of the prevailing feeling that I have described. We then go to the most important part of this report. At the conclusion of the speech Professor Bhanu said: "Every Mahratta, every Hindoo, to whatever party he may belong, must rejoice at this (Shivaji) festival. We have to strive to regain our lost independence, and this terrible load is to be uplifted by us all in combination." There has been much dispute about the word *swâtantrya*. 'Liberty' is applied in all sorts of sense in English. It may, according to the context, mean some kind or other of liberty. In connection with this sentence the translation of the word is liberty or independence: independence is national or political liberty. Then there are the words "This terrible load is to be lifted by us all in combination." It is difficult to realise what the terrible load means except that it means a task of regaining liberty. Then it was said "it will be never proper to place obstacles in the way of any person who tried to uplift the terrible load by any mode he chose. Choose your own mode; let other people follow theirs." That means that we should not set ourselves up to judge persons who are trying to follow their own views. It was perhaps even stronger than that, for it advised no interference, as was shown in the next remark: "Our mutual dissensions impede our progress greatly." I suppose that must be read in combination with what had gone before, and must be intended to mean the regaining of lost independence. He then says: "If anyone be pressing down the country from above, cut him off, but do not place impediments in the way of others." Assuming that that only meant not to place impediments in the way of others, let them then consider the next words: "Let bygones be bygones, and let us forget and forgive one another for them. Have we not had enough of this strife which would have had the same value in the estimation of great men as a fight among rats and cats? All occasions like the present festival which tend to unite the whole country must be welcome." There you will see that all dissensions are advised to be put aside. Now, in regard to the meaning of the lecture, Professor Bhanu has given his own explanation. Mr. Pugh has put before you a letter of the Professor which had been sent after the article had been published. It appears that after the lecture was published some attention was drawn to it in a letter to the *Times of India*, and this came to the notice of Professor Bhanu who wrote on 8th July 1897, expressing his opinion of the construction to be put upon his lecture, and also gave his own version of what took place. He said he did not mean to allude to independence, but that the end and aim of the lecture was something entirely different, and that he agreed with Tilak only in so far as the Shivaji celebration was concerned, and that they had come together for that purpose. There are two different points in connection with the matter, and I shall put them before you, and it will be for you to consider which of them you rely on. The prosecution had said the meaning of the words used signified lost independence, and the defence theory is that the sentence is not intended to be read in that way, but that it should be read in another way altogether. Here were two public men agreed more or less in regard to putting forward some scheme in regard to the gaining of their lost independence, one of whom had suggested that in some future time their children would be able to take the administration of the country into their own hands. That idea might be consistent or inconsistent, and in

regard to that let us see what follows, remembering that it is a most clear indication of the intention of the publisher in putting such remarks in his paper. Let us look at the paragraph which goes on to state, "So saying the Professor concluded his speech." Afterwards Professor Jinsiwale said: "If no one blames Napoleon for committing two thousand murders in Europe, and if Cæsar is considered merciful, though he needlessly committed slaughters in Gaul (France) many a time, why should so virulent an attack be made on Shri Shivaji Maharajah for killing one or two persons? The people who took part in the French Revolution denied that they had committed murders, and maintained that they were only removing thorns from their path. Why should not the same principle (? argument) be made applicable to the Maharashtra?" You must take into account the way in which the accused dodges about from present to past and past to present. He had also suggested that Shri Shivaji was no more deserving of blame than Napoleon for killing people. I think it, however, only fair to tell you to bear in mind that this article only purports to be a report of the proceedings of a meeting, and must have been a good deal condensed. The word "afterwards" may have been intended to denote the lapse of a considerable period, and that the rapid transition from Shivaji to Napoleon may thereby not be so significant as it appears in the article. The allusions to Shri Shivaji and Napoleon and the killing of people in the French Revolution might have been justified, but why should he allude to the present time and the Maharashtra?

Then the article continues: "It is true that we must swallow down our opinions on any occasion when an expression of them might be thought detrimental to the interests of the country, but no one should permit his real opinions to be permanently trodden under foot." Professor Jinsiwale concluded his speech by expressing the hope that next year there would be "witnessed greater unity amongst the various parties in Poona on the occasion of the festival." You have got the document before you, and I advise you to read the whole of the paragraphs again. I cannot say more about it than I have done, except that it is for you to say whether it does not strike you that the construction put on the words by the translator is correct in regard to all the talking about lost independence. Take the whole passage containing the reference to "striving to regain our lost independence," and say if you think it is a peaceful sentence. If you think so, you can believe the defence, but you must also consider whether there is not a good deal of significance in the allusion to lost independence. It is for you to say whether you think these expressions cannot be taken as meaning an intention to excite the feelings of the people. Counsel on both sides have dealt with the matter, and I now leave it entirely to you to deal with it, and in doing so to consider the time it was used and the feelings of the people to whom it was addressed. You have to consider the whole article, and whether he was justified in seeking greater political power for Hindoos from the British Government. We then come to the words "after Professor Jinsiwale concluded his speech, the President, Mr. Tilak, commenced his discourse." In regard to that you must weigh the explanation of Professor Bhanu, and remember that it was published in July, while the original article appeared on the 15th June. Professor Bhanu was then trying to excuse himself from something that had appeared in the *Times of India*

(Ex. No. 16), but in considering that you need not swallow everything that has been said to you. We then come to the part of the article where Tilak was the discourser. He said : " Great men are above the common principles of morality. These principles fail in their scope to reach the pedestal of great men." In[1] that Tilak undoubtedly draws a line between his hero and himself, and it is satisfactory that he does so, but he ought to have considered the subject was one that readers of a newspaper might misunderstand.

In writing such an article he should have done so with the greatest care, especially when he considered the then state of the people, but the fact still remains and it is undoubtedly a fact that he drew a line between ordinary men and exceptional men like Shivaji.[2] The next sentence is : " Did Shivaji commit a sin in killing Afzulkhan or how ? The answer to this question can be found in the Mahabharat itself. Shrimat Krishna's advice in the *Gita* is to kill even our teachers and kinsmen." In regard to that Tilak has clearly said that no blame attaches to any one who kills his teachers. Asking them to also consider that sentence with the others, his Lordship alluded to the following passage :—" With benevolent intentions he murdered Afzulkhan for the good of others. If thieves enter our house and we have not sufficient strength in our wrists to drive them out, we should, without hesitation, shut them up and burn them alive.'" In regard to that sentence, it might be taken as a justification to people unable to resist the inroad of the thieves to burn them alive, and might have reference to a resistance of the Government. The Jury must, in considering the article, take into consideration Tilak's remarks about the French Revolution,[3] about the entering into the houses, and his remarks about Afzul Khan and the justification of Shivaji and all the rest of it, and taking them in conjunction with the context, you are to make up your mind whether the accused meant only that " the people should unite to improve the people and to share in the administration of the British rule," or that he meant that the British rule was a terrible burden, and that extreme measures should be resorted to for the accomplishment of that object. You must in this matter exercise your common sense and your understanding of the way in which a loyal man writes. You must exercise your common sense and your knowledge of the world and you may consider again and again right through the case in what light an ordinary reader of the *Kesari* would have taken the passages in question ? It is for you to determine what an ordinary reader would think of the justification of Shivaji

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1 The following report of the *Times of India* gives this portion in greater detail :— " In his justification of the killing of Afzulkhan, it is satisfactory to find that Tilak draws a sharp line between the rule to be applied to a great man or hero, and common men like himself. It does not seem to me, however, that a discussion as to how far great men are bound by ordinary rules of morality was a proper one to circulate about. I do not say it never ought to be done, but scrupulous care ought to be exercised, especially by a leader of society like Tilak."

2 The same report says after this : " But did Tilak maintain this sharp dividing line on the question of morality throughout. He starts with it, but this article goes from the present tense to the past, and the past to the present, in a most remarkable way. Here you might think that at all events Tilak slightly departed from his former position, that great men only were above the ordinary code of morality, and also in what he said in the last paragraph about persons who put obstacles in the way."

3 Mr. Tilak referred to the French Revolution in his speech.—K. G. D.

committing the murder, and of the people being invited to unite and other things mentioned in the article, considering the state of the country and the state of feeling prevailing particularly at Poona and in Western India.

Then they came to an important sentence, "God has not conferred upon *mlenchhas* the grant inscribed on a copper plate of the kingdom of Hindustan." There had been a good deal of dispute about who was meant by the *mlenchhas*, and as to whether it was "has" or "had," but the Advocate-General had said he would not labour the point, and I advise you to accept the word "had." Mr. Tilak in his letter to the *Times of India* had stated that by *mlenchhas* he meant Mahomedans, and this letter the jury were entitled to weigh, subject to the consideration he had referred to in Professor Bhanu's case, that this was the letter of a man on his defence.

We next come to the sentence, "The Maharaja strove to drive them away from the land of his birth. He did not thereby commit the sin of coveting what belonged to others." Here, again, was the justification for a driving out of the British. Then, we come to the sentence, "Do not circumscribe your vision like a frog in a well; get out of the Penal Code." Before going into this matter I would like to refer to the reference of the *mlenchhas* made by Tilak. He referred to the French Revolution, and in that way strove to justify the killing of Afzulkhan by Shivaji, or in other words, attempted to justify political assassination. Now, with regard to getting out of the Penal Code, he advised his readers to leave out of consideration the four corners binding the Code, and like great men get into the higher atmosphere of "Shrimat Bhagwad Gita." Later on there was the sentence, "A country which cannot unite even on a few occasions should never hope to prosper." Here you have the exhortation that where an action was for the good of the community, that Hindus like Professor Bhanu, who is a Reformer, should be willing to unite with the orthodox party and sink their differences for the common good. Here was a distinct appeal that however much they may be disunited during the 365 days of the year, that on one day at least and on one subject they should be united. You are to decide whether by this was meant simply to unite for the purpose of improving the condition of the people so that they might ultimately take a larger share in the administration of the country, or whether it was to unite to get rid of the terrible burden of British rule and not to be too particular about adopting extreme measures to that end.

I will now consider the other articles which have been put in on the part of the prosecution to prove *animus* and to show that the paper had that spirit in other writings in its columns, and by the defence to show the loyalty of the prisoner Tilak in connection with certain articles regarding the plague operations. I would remind you, gentlemen of the jury, that these articles are of secondary importance. If you come to the conclusion that the two incriminating articles, as they have been called, are sufficient for you to give a verdict, then you are to put aside from your minds entirely these other articles. But, on the other hand, if you have any doubt with regard to the articles which form the subject of the charge, you will take into consideration those articles put in on the one hand by the prosecution to prove *animus* and on the other hand by the defence to prove otherwise. First of all, I propose to deal with the articles put in by the defence in respect to the plague. The first set covers a period from the 16th February to

the 4th of April, and it shows that Tilak was sincerely anxious to get rid of the plague. He co-operated with the Government and did all in his power to get his co-religionists to accept the regulations of Government. That, as Mr. Pugh said, was very excellent work. It is also in evidence that on the 8th of March he submitted a memorandum to Government embodying certain suggestions in connection with the plague which was formally acknowledged by the Private Secretary to Lord Sandhurst. You have not that memorandum before you, but some indication of it has been given by Mr. Pugh in connection with something which appeared in the *Mahratta*. I have no doubt that the suggestions were very good ones, and though during this period there was some criticism of the Government measures appearing between the 16th February and the 4th April in the *Kesari*, they did not overstep the bounds of legitimate criticism. On the 4th May, however, an article of quite another character appeared. It was in connection with the plague, and showed that Tilak's opinions had for some unknown reasons undergone considerable change. In it there was a complaint against the British soldiery, they were charged with committing all sorts of excesses, with insulting women and committing thefts. He said the people were discontented, and there seemed to be a deliberate intention to impute to Government that they were oppressing the people. You will bear in mind that this was nearer the date of the publication of the incriminating articles which were published on June 15th; and it seems to me that Tilak's feelings at that time were the reverse of friendly. This is important in connection with Mr. Pugh's argument that the prisoner could not be attempting to overthrow the Government because he was at that time co-operating with the Government. But the desire to overthrow the Government at that particular time was perfectly immaterial. Moreover, it is ridiculous to suppose that Tilak expected any personal benefit from attacking Government. It was hardly likely that in the year 1897 the whole of the executive machinery of the Government could disappear and a native agency be substituted in its place. May be, it was anticipated, that two or three hundred years hence such a thing might happen, but it is foolish to suppose that Tilak would gain personally. But, on the other hand, it was not unreasonable to suppose that while disliking the Government and planning for their overthrow, he should have been co-operating with the Government and been genuinely anxious to get rid of the plague. He is a man of intelligence, and there is no doubt that he was willing for the time being to restrain any feelings that he may have had against the Government in uniting in a common cause. Probably, he thought that the ends justify the means. There was also an article, dated 18th May 1897 [see Ex. No. 24, in the Appendix] regarding a deputation to Mr. Rand in connection with the Hindu Plague Hospital, in which certain suggestions were made with regard to continuing it. But this hardly has any bearing upon the case. We now come to what may be called the Jubilee articles. These have been put in by the defence. The first of them is dated the 8th June [see Ex. No. 26 (1), and is chiefly in praise of the personal character of the Queen, her virtues as a sovereign and the success of her reign. It refers to the increase of commerce, English dominions, and generally to the great improvement during her 60 years' reign. I need not trouble you with reading these articles in detail. Time will not permit of it. It was said by the prosecution that these articles had been copied; that would not affect them. They were very clever articles, no

doubt, compiled from authorities; but that was perfectly legitimate. I have nothing to say about this article. There is nothing the least objectionable in it. There was much to approve of. But the celebration of the Queen's Jubilee had called forth expressions of appreciation from the whole world, and Tilak's appreciation of the personal worth and virtues of the Queen was not incompatible with a great degree of hostility to the British rule as administered in India. All the continental papers had been loud in appreciation of the Queen, and it could not be urged that they showed any loyalty or (? their appreciation) was incompatible with a dislike to the British nation. There was another article on the 15th of June [see Ex. No. 26 (2)], which pointed out the great increase and the strength of the Empire, and a third article [see Ex. No. 26 (3)] dealt with the state of India during the reign. After discussing the question in an inoffensive way, the writer comes to the conclusion that, on the whole, the state of the people in India is very much worse now than at the commencement of the reign, and that they have not the same reason to rejoice at the Jubilee as the English have. Although they made that distinction, there were certain expressions here and there which went to show that the people of India were bound to rejoice to some extent, but there is not much value to be attached to a few scattered sentences of that kind. The Jubilee had been discussed by writers in the papers all over the world, and expressions of admiration for the Queen or the power and greatness of British rule were used by foreign writers, of whom it could not be argued that they were necessarily in love with British rule. I do not think that in order to show that, it could logically be argued that because Tilak wrote these articles, he could not at the same time dislike the Government or incite against it.[1] We must also remember that, in connection with the Jubilee, Tilak published the article on the "Indian princes" who went to London to participate in it. I will now read the article (Ex. P). (His Lordship, having read the article, continued.) The native princes were not only sneered at in every line, but were told that they were unwelcome, and this although they were the guests of the Queen and the country. The jury must form their opinion as to the spirit which breathed in every line of that article, which was nothing but a string of sneers at the princes of India who went to show loyalty to the Queen, as many other people did. Mr. Pugh had contended that this was only a skit, such as might be published in *Punch* and *Truth*, and a protest against the extravagant expenditure of princes going home, spending money on the journey, and in the celebration of the Jubilee; but the only remark which referred to this point is the last sentence in the whole of the article. There is a distinctly disloyal reference to the Prince of Wales who is likened to a circus-wallah. Can you say that the object of the article was to protest against extravagance or is it a string of sneers against the native princes for showing loyalty to the Queen? This is a seditious article, but you are not prosecuting for that. What you are asked by the defence to say is that it was not compatible with the feelings of the accused Tilak to write disloyally. I ask you to compare this article with the others of the time and to come to your own conclusion. I ask you to say whether it could be considered

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[1] At this stage Mr. Justice Strachey said something to this effect: "It undoubtedly shows most intelligent appreciation of the power and greatness of England, but that is absolutely compatible with the greatest possible hatred of British rule in India."—K.G.D.

as a skit or an article the object of which was to sneer at princes for showing loyalty to the Crown. Mr. Pugh, for whose speech I have nothing but the warmest admiration, also argued that Tilak could not have been actuated by a desire to create disaffection because the second of the Jubilee articles showed that he had a knowledge of the invincible power of England. Tilak knew this so well that he quite understood, said Mr. Pugh, that it would be hopeless to try to overthrow that power. I think it is perfectly clear that Tilak knew this, but I do not for one moment suppose that any gentleman of the jury would think that the articles were issued to subscribers of the *Kesari* with the definite intention that those persons and others would within the next few months, or even in the next few years, rise up against the might of English rule. It was quite clear that he was far too intelligent a man—to put it on no other ground—to think of that, but it was not material that there should be any assignable time in which the seed of disaffection sown should ripen into revolt in order to bring these writings under Section 124A. The question whether readers of the articles would be led thereby to come into conflict with the British power was not the test of guilt under Section 124A at all. It was sufficient for the purposes of the section if the feeling the prisoner intended to incite was enmity against Government—an enmity that might take root and spring up in the distant future.

The other articles to which I will refer might be divided into two sections —those which were apparently contributions from outsiders and those which were editorial articles. Mr. Pugh very rightly said that a distinction must be drawn between the two. But I would point out that in his letter of 22nd June to the *Times of India*,[1] replying to the criticisms of correspondents upon his speech at the Shivaji celebration, Tilak not only attacked the correspondents, but also attacked the editor, and proceeded on the assumption that the insertion of a letter of that particular sort implied on the part of an editor a degree of agreement. I simply mention this, but it must not be necessarily assumed that the views of correspondents represented the views of the editor or proprietor. It was quite true, as Mr. Pugh said, that he was not bound to prove anything as to the authorship of contributed letters ; but if he did not, I think that it is possible to say that the insertion of letters against Government might be looked at as of some value in considering the intention of the paper itself. However, I do not intend to lay any particular stress upon that. We will now have to consider the letter of "Ganesh," published in the *Kesari* of 4th May (Ex. **K**). I will read you a few passages. Among them are: "And perseveringly ask Him again to create among us a Shivaji similar to this," and "so will our young men, instead of doing this, imitate during their lifetime most of the things recorded in the life of Shivaji and in the Ramayana." This is a distinct reference to Shivaji, and bears on the point that the Hindus are to emulate the deeds of Shivaji. I ask you to make up your minds as to whether you think that the allusion to the story of Mahomedans (? Rama) overthrowing the rule of the Brahmin oppressor in Ceylon has any hidden reference to British rule.

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[1] His Lordship apparently refers to Mr. Tilak's letter of the 28th June appearing in the *Times of India* of the 30th June (Ex. 17 in this case). Before that time there was not only correspondence in the paper, but the aditor had also taken a strong attitude against Mr. Tilak in the editorial columns.

I will only refer briefly to the article of the 30th May, headed "Arms Act for Baroda." (Ex. O.) I do not want to lay too much stress upon it; but still if you have any doubt about the incriminating articles as to whether the writer or publisher had any intention, you will bear in mind this distinct intimation that, if constitutional measures fail, there could be resort to arms. There is an article of 9th February (Ex. 20) about the sowkars, but with this article I shall not deal in detail; it is simply a question regarding the revenues, and for the defence the last passage—"Only the sowkars must patiently set forth their claims before Government. Wherever notices have been served upon them, they must send their petitions to the Collectors and through them to the Government; and we believe that if such applications are made and the work carried on in earnest, at least some of the grievances will be redressed"—was urged in defence of the prisoner. You must give whatever weight you think just to this; but still, although the petitions may be made, it is hinted that there will be very little chance of redress.

Having read you all these articles and having called your attention to certain matters, I must tell you that you must divide them under two heads. First of all, you must remember the test to be applied is, whether these people were trying to stir up a rebellion or feeling of enmity against the Government. Secondly, it is for you to consider the class of readers of the publication and the state of feelings at the time the articles were published and the natural effect which, according to their view, the articles of the 15th June would have upon them at such a time. Now, I just want you to consider what does and does not concern you. You have nothing to do with the conduct of the Government in this matter. It is a matter entirely for them to consider. All you have to consider is, whether the prisoners are guilty or not guilty. I have already spoken to you about the question of the trial at Poona. With regard to the telegrams supposed to have been sent Home, we have no evidence to justify it, and there is also nothing to show when the articles were first sent for translation to the Oriental Translator. We have it on record, however, that Tilak was returned to the Legislative Council on the 23rd of May and that his election was accepted on the 24th of June. With regard to when the translations were sent to Government, we are entirely in the dark. Even Mr. Baig said he could not fix the date, and I would ask you, gentlemen of the jury, to give an impartial consideration to this case. Everyone of you must try to forget everything that you have heard or read in this case, and make up your minds, without prejudice, to give a verdict on what has been put in evidence before you. You are to read the articles with the other evidence, and putting aside all prejudice say if Tilak was trying to make his readers hate the Government or was commenting on measures with a view to excite disapprobation compatible with a definite policy to support the Government. I do not think you will find any difficulty in deciding. You are simply to look at in the way that it has been placed before you, and I would ask you all to try, if possible, to come to an unanimous conclusion either one way or the other. Take your time about the decision, and do not return until you are either unanimous or are quite sure that no amount of discussion will make any change in the verdict at which you arrive. If you have any reasonable doubt about the guilt of the prisoner, you are to give him the benefit of that doubt, but at the same time if you feel that in connection with these articles he is guilty

of exciting, or attempting to excite, feelings against the Government established by Law in British India, you will be justified in bringing a verdict against him.

The jury retired at 5 p.m. Immediately the jury retired, Mr. Pugh rose to address the Court.

Mr. Pugh: Your Lordship, with regard to the two points which you will remember your Lordship reserved on a former occasion as to whether there was sufficient order or authority for the complaint in this case.

His Lordship: I will hear you, Mr. Pugh.

Mr. Pugh: The three points are :—First, whether there was any sufficient order or authority within the meaning of Section 196 of the Criminal Procedure Code for the complaint made in this case; secondly, if not, whether that Court had power notwithstanding to accept the commitment under Section 532 of the Criminal Procedure Code and proceed with the trial; and thirdly, if, in regard to the charge, he directed the jury that disaffection was the absence of affection Now your Lordship has put it according to my notes that disaffection only means want of affection. Your Lordship, I think, also used the words ill-will, dislike, enmity. The point I wish to call attention to is whether your Lordship's direction to the jury that disaffection was absence of affection was correct.

His Lordship: What I said was that the term absence of affection might be taken in its general sense as ill-will, disloyalty, enmity. They are only shades of difference.

Mr. Pugh: What I understood was that your Lordship used the words absence of affection and illustrated it by the words ill-will, emmity, &c.

His Lordship: I intended to use the words absence of affection as a general expression of all those terms.

Mr. Pugh: I would point out that the term disaffection can only be applied as regards the disaffection of a regiment to an Officer, or the subject to the Government, and is expressed in Webster's Dictionary by the word "Disloyal."

His Lordship: Mr. Pugh, I fully considered the points you have raised, and as I do not think any useful purpose will be served by reserving them, I. decline to do so.

The Jury returned at 5-40 p.m.

The Clerk of the Crown: Are you unanimous?

The Foreman of the Jury: We are unanimous with regard to accused No. 2, but are not unanimous with regard to accused No. 1.

The Clerk of the Crown: What is your verdict with regard to accused No. 2?

The Foreman of the Jury: Not guilty on both counts.

The Clerk of the Crown: What is your majority?

The Foreman of the Jury: 6 to 3.

The Clerk of the Crown: Guilty or not guilty?

The Foreman of the jury: 6 for guilty and 3 for not guilty.

His Lordship: I accept the verdict.

The Clerk of the Crown: Tilak, you have been found guilty of attempting to create disaffection against the British Government. Have you anything to say why judgment should not be passed upon you according to law?

Tilak: I wish to make a statement. In spite of that verdict I still maintain I am innocent, and for this reason: I think the verdict has been arrived at owing to the misunderstanding of certain Marathi Texts. In fact, there was not a single intelligent Mahratta gentleman put into the witness-box by the prosecution. It seems to have been lost sight of, and not pressed on the attention of the jury, but whatever it is, I still hold that the writings themselves are not editious. They were not written with any seditions intention, and were not likely to produce that effect, and I do not think they have produced that effect on the readers of the *Kesari*, or would produce on any intelligent Mahratta readers.

The Judge: Tilak, you have been found guilty of attempting to excite feelings of disaffection to the British Government established by law. And I agree with that verdict. I do not think any reasonable and fair man applying his mind to these articles could doubt that in publishing them you have been animated by a feeling of disloyalty and disaffection to the British Government, and that you attempted to inspire those feelings in your readers. I have now to consider what sentence I shall pass on you. I may state at once that I do not intend to pass on you the maximum sentence allowed by law, or anything like that sentence. In my opinion the maximum sentence ought to be reserved for the worst possible offence under the section. Although I take a serious view of your offence, I do not take such a serious view of it as that. There are certain considerations, which I shall take into account in passing sentence. I take into account that this is the very first prosecution under the section in this Presidency and the second in India. The section under which you have been convicted has been allowed to remain for a considerable time almost as a dead-letter, and I think that you and others like you may have been emboldened by this to think hat there was no kind of writing in which you might not indulge with impunity. I shall take that into consideration to some extent in passing sentence upon you. I shall also take into account and will attach still more weight to the fact that, at all events for a considerable period, you did good work in connection with the plague and attempted to enforce a reasonable policy upon your countrymen. To that extent you co-operated with the Government and did so not long before you published these articles. I shall also take that into account in passing the sentence upon you. But, on the other hand, I must take into account certain other facts which are not in your favour. You are not an ordinary obscure editor and publisher, but you are one of the leading members of your community; and being a man of influence,—many of your people look for their guidance to you—a man of intelligence, a man of remarkable ability and energy, and who might under other circumstances have been a useful force in the State. Instead of adopting that course which would have brought you credit, you have allowed yourself to publish articles of this kind which, if persisted in, could only bring misfortune upon the people. I must also take into account that a man like you must know that, at such a time as this, it behoves everyone, especially persons of influence, to be careful as to how they address the people in regard to their relations with

the British Government. I have done my best to bear in mind everything that could be considered in your favour, as well as the matters considered against you, and the result is that I have come to the conclusion that I ought to pass upon you half the full term of imprisonment allowed by the section, namely, a sentence of eighteen months' rigorous imprisonment.

Keshav Mahadeo Bal, the Jury have found you not guilty. You are discharged.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CROWN SIDE.

IN THE MATTER OF CRIMINAL CASE.
IMPERATRIX
vs.
BAL GANGADHAR TILAK AND ANOTHER.

To

THE HON'BLE THE CHIEF JUSTICE AND OTHER JUSTICES OF THIS HONOURABLE COURT.

The Petition of the abovenamed BAL GANGADHAR TILAK *now undergoing sentence of imprisonment in Her Majesty's Common Jail at Bombay.*

SHEWETH,

That on the 27th day of July 1897 a warrant was issued for the arrest of your petitioner by the Chief Presidency Magistrate of Bombay upon a complaint or information laid before the said Magistrate on the same day by Mr. Mirza Abas Ali Baig, the Oriental Translator to the Government of Bombay, charging your petitioner and others with having committed an offence punishable under Section 124A of the Indian Penal Code in respect of certain printed matter in the issue of a weekly Marathi Journal styled the *Kesari* for the 15th day of June 1897.

2. That your petitioner was thereupon and on the said 27th day of July 1897 arrested in pursuance of the said warrant, and was committed to prison, bail being objected to by the prosecution and refused him by the Magistrate; and thereafter on the 31st day of July 1897 certain evidence was recorded by the said Magistrate against your petitioner and one Keshow Mahadeo Bal, including certain translations of the said printed matter made by one of the sworn translators of this Honourable Court on the 30th day of July 1897, and also what purported and was alleged to be a sanction or authority to the said Mr. Mirza Abas Ali Baig to prosecute your petitioner and one Hari Narayan Gokhale of which the following is a true copy:—

"Under the provisions of Section 196 of the Code of Criminal Procedure Mirza Abas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadher Tilak, B.A., LL.B., of Poona, Publisher, Proprietor, and Editor of the *Kesari*, a weekly vernacular newspaper of Poona, and against Mr. Hari Narayan Gokhale of Poona, Printer of the said newspaper, in respect of certain

articles appearing in the said newspaper, under Section 124A of the Indian Penal Code and any other section of the said Code which may be found to be applicable to the case.

By order of His Excellency the Governor in Council,

(Sd.) S. W. EDGERLEY,

Secretary to Government.

POONA, *July 26th* 1897.

3. That, after the said evidence had been recorded, your petitioner was again committed to prison, bail being refused by the said Magistrate, the prosecution on that occasion also objecting to your petitioner's release on bail.

4. That on the 2nd day of August 1897 further evidence was recorded in support of the said complaint, and your petitioner made a statement admitting, to avoid waste of public time, that he was the Publisher and Proprietor of the said journal the *Kesari*, and that the same was published in Bombay and other places, and on the same day your petitioner and the said Keshow Mahadeo Bal were charged by the said Chief Presidency Magistrate with offences under Section 124A of the Indian Penal Code in respect of the said printed matter, and were committed to the then ensuing Sessions of this Honourable Court to be tried on the said charge. On the 4th day of August last your petitioner was admitted to bail by this Honourable Court notwithstanding further strenuous opposition by the prosecution thereto.

5. That your petitioner and the said Keshow Mahadeo Bal were thereafter and on the 8th, 9th, 10th, 11th, 13th and 14th days of September 1897 tried upon the said charge by the Hon'ble Mr. Justice Strachey, one of the Judges of this Honourable Court and a Special Jury, and on the said 14th day of September 1897 your petitioner was found guilty by a majority of six to three of the said Jurymen of attempting to excite feelings of disaffection to the Government established by law in British India under Section 124A, and was sentenced to undergo eighteen months' rigorous imprisonment.

6. That in the course of the said trial the said alleged sanction or authority to prosecute your petitioner was tendered in evidence on the part of the prosecution and was objected to on behalf of your petitioner on the ground that the same was not a sufficient order or authority under Section 196 of the Code of Criminal Procedure for the complaint against your petitioner in respect of the offence charged against him, but the said objection was overruled, the said learned Judge holding that the said alleged sanction was sufficient within the said section, and that even if it was not, the defect, if any, was cured by the provisions of Section 532 of the said Code. Your petitioner humbly submits that the reception of the said sanction in evidence greatly prejudiced him in his trial

7. That in the course of the said trial certain other printed matter appearing in the issues of the *Kesari* for the 6th of April, the fourth of May, and the 25th of May 1897, respectively, were tendered in evidence by the prosecution as showing the animus of your petitioner, and were objected to on your petitioner's behalf on the ground that the same consisted of contributions to the said journal from different correspondents, and were not admissible to show the

animus of your petitioner, but the said objection was overruled, and the said evidence admitted. Your petitioner humbly submits that the reception of the said evidence greatly prejudiced him in his trial.

8. That in the course of his address to the Jury on behalf of your petitioner your petitioner's Counsel was proceeding to read to the Jury from the proceedings of the Legislative Council of India extracts from the speeches made by Sir James Stephen in introducing the Bill, which subsequently became the Act under which Section 124A was introduced into the Indian Penal Code, on the ground, amongst others, that the same showed the circumstances under which the said section was enacted, but the said learned Judge ruled that your petitioner's Counsel was not entitled to read the same as part of the speeches of the said Sir James Stephen, though he might do so as part of his own argument only, and as representing only the views which your petitioner's Counsel desired to put before the Jury.

9. That in the course of his summing up to the Jury the said learned Judge, among other things, directed the Jury, and as your petitioner is advised, misdirected the Jury as follows, that is to say :—

(*a*) That 'disaffection' meant simply absence of affection.

(*b*) That it meant hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government.

(*c*) That disloyalty was perhaps the best general term, and that it comprehended every possible form of bad feeling to the Government.

(*d*) That a man must not make or try to make others feel enmity of any kind against the Government.

(*e*) That the word Government meant British rule or its representatives or administrators.

(*f*) That the explanation to the said Section 124A did not apply to any writing which did not consist merely of comments on the measures of Government, but of attacks upon the Government itself.

(*g*) That, if the Jury came to the conclusion that those articles, the subject of the charges, were an attack not merely upon such measures as the Epidemic Diseases Act or any particular tax or administrative measures, such as the steps taken by the Government for the suppression of plague or famine, but upon the Government itself, its existence, its essential characteristics, its motives or its feelings towards the people, then they must put aside the explanation altogether and apply the first clause of the section.

(*h*) That a man might express the strongest condemnation of such measures, as the Income Tax Act, the Epidemic Diseases Act, or any military expedition, or the suppression of plague or famine, or the administration of justice, and that he might do so severely and even unreasonably, perversely and unfairly; but that, if he went beyond that, and whether in the course of comments upon measures or not held up the Government itself to the hatred or contempt of his readers, as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign

origin or character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people, then he was guilty under the section and the explanation would not save him.

(*i*) That this view of the law secured all the liberty which any reasonable man could desire, and that to allow more would be culpable weakness and fatal to the interests not only of the Government but of the people.

(*j*) That, if the Jury thought that the readers of the articles charged would naturally and probably be excited to entertain feelings of enmity to the Government, then the Jury would be justified in presuming that your petitioner intended to excite feelings of enmity or disaffection.

(*k*) That the Jury must ask themselves, having read the articles, whether the writer was trying to stir up the feelings of the readers against the Government, or was trying to do something altogether different.

(*l*) That in the poem "Shivaji's Utterances" no particular measure was referred to and the charge was brought against Government that in this time of scarcity, famine and distress they were taking wealth out of the country, and that though there was no objection to newspapers writing articles upon the expenditure of the country when the object of the writer was to obtain some measure of financial reform, they must take this reference to taxation in connection with everything that followed and also with the fact that no particular taxation was referred to.

(*m*) That referring to the said poem nothing suggested itself to the mind of his Lordship why all these topics were accumulated at that particular moment, his Lordship not seeing that there was any discussion at all.

(*n*) That in the said poem nothing was said in the way of criticism of a rash and negligent act, such as was dealt with in the "Kesari" article of 1894.

(*o*) That, with reference to the concluding portion of the article, the greater part could have no meaning at all unless the Government had not done what it was there exhorted to do, namely, to make the people happy, but it was stated that they were not happy, and that his Lordship did not see anything which necessarily referred to a petition by the people; that there was a message from Shivaji to the British Government, and as he reminded the English of the benefits they received from him, the allusion was placed beyond doubt, and that there was not the slightest doubt that the writer intended to stir up enmity to the British Government.

(*p*) That, in considering the intention of the second article, the Jury had to put it side by side with the first article, but his Lordship omitted to point out that in the original paper an editorial article upon Her Majesty's Jubilee which was put in on behalf of your petitioner was inserted between the two.

(q) That the Jury must take into account the way in which (in the second article charged) your petitioner dodged about from present to past and from past to present.

(r) That the allusions to Shri Shivaji and Napoleon and the killing of people in the French Revolution might have been justified, but why should the speaker allude to the present time and the Maharashtra ?

(s) That your petitioner had clearly said that no blame attached to any one who killed his teachers.

(t) That the sentence, "If thieves enter our house, and we have not (sufficient) strength in our wrists to drive them out, we should, without hesitation, shut them up and burn (them) alive," might have reference to a resistance to the Government.

(u) That though his Lordship in the earlier part of his charge had told the Jury that he did not wish in any way to suggest that there was the relation of cause and effect between the articles charged and the abominable murder of Mr. Rand and Lieutenant Ayerst, and that the Advocate-General had said he could not prove that those murders were caused by these articles, and for that reason his Lordship asked the Jury to put that idea out of their minds, yet in the latter part of his charge his Lordship said that it would be for the Jury to determine what an ordinary reader would think of the justification of Shivaji committing the murder and of the people being invited to unite and other things mentioned in the said second article charged, considering the state of the country and the state of feeling prevailing particularly at Poona and in Western India; and stated that your petitioner had said that they (meaning his hearers) must be guided by Shrimat Krishna's advice in the "Mahabharat," and had added that no blame attached to any person for doing anything if he was not actuated by a desire to reap the fruit of his deeds.

(v) That the Jury should bear in mind that the article of the 4th of May was much nearer the date of the publication of the alleged articles charged than the other plague articles, and showed that your petitioner's feelings towards the Government at that time were the reverse of friendly, his Lordship passing over, as of no importance, the article of the 18th of May put in on behalf of your petitioner showing that he was on friendly terms with Mr. Rand, that the plague had then almost subsided, and that the soldiers were about to be withdrawn on the 20th of May.

(w) That no evidence was given as to the state of public feeling at Poona on the dates when the speeches were delivered and published in the "Kesari" of the 15th June 1897, yet his Lordship referred to the existence of a state of agitation and unrest, and did not point out to the Jury the fact which appeared in evidence that it was officially notified to the public on 18th May 1897 that the plague operations would cease and the soldiers would be removed on 20th May 1897.

10. That before the verdict of the Jury was delivered your petitioner's Counsel applied to the said learned Judge to reserve the following questions of law, namely :

(1) Whether there is any sufficient order of authority within the meaning of Section 196 of the Criminal Procedure Code for the complaint made in this case ;

(2) If not, whether this Court had power nevertheless to accept the commitment under Section 532 of the Criminal Procedure Code and to proceed with the trial ;

(3) Whether the direction to the Jury that disaffection means simply absence of affection in any degree towards the British rule or its administrators or representatives is correct ;

for the opinion of this Honourable Court, but that his Lordship declined to do so

11. That your petitioner thereafter through his Solicitor, Mr. Bhaishanker Nanabhai, applied to the Hon'ble the Advocate-General for a certificate under Section 26 of the Letters Patent, but the Hon'ble the Advocate-Generel declined to grant it.

12. That your petitioner is advised and verily believes that, in addition to the specific instances abovementioned, the learned Judge also misdirected the Jury upon other points, and that, if the learned Judge had not so misdirected the Jury as abovementioned, the majority of the Jury would not have found a verdict against your petitioner.

13. That this case is one of the greatest importance not only to your petitioner but to the whole of the Indian Press and also to all the Indian subject of the Crown, inasmuch as according to his Lordship's charge a petition for the redress of grievances however unobjectionable in other respects would subject the person or persons presenting the same to the punishment provided by Section 124A of the Indian Penal Code.

14. That your petitioner is also advised and verily believes that, if the said charge be held to be a correct exposition of the law, it will seriously interfere, if not entirely do away, with the liberty of the press and the right of freedom of speech and public meeting in India.

Your petitioner therefore humbly prays that your Lordships will be pleased to declare under clause 41 of the Letters Patent that this case is a fit one for appeal to Her Majesty in Council.

And your petitioner, as in duty bound, will ever pray.

(Sd.) BAL GUNGADHAR TILAK.

(Sd.) BHAISHANKER & KANGA,

Petitioner's Attornies.

I, Bal Gangadhar Tilak, the petitioner abovementioned, do solemnly affirm and say that what is stated in the foregoing petition is true to the best of my information and belief.

(Sd.) BAL GUNGADHAR TILAK.

Solemnly affirmed at Bombay aforesaid this 17th day of September 1897

Before me,
(Sd.) F. H. De BRITTO,
Commissioner.
(Sd.) A. F. M.,
Superintendent.
17-9-97.

Decision of the Court.

The Chief Justice, in giving the decision of the Court, said :—The question we have to determine in this case is whether, in the opinion of this Court, it is a fit case for appeal to Her Majesty in Council. In reference to that it must be remembered that the Privy Council have themselves laid down certain rules which guide them in considering whether appeals, in criminal cases, are fit cases for appeal or not ; and that they have expressly decided that there is no general appeal in criminal cases ; it is only when an important ordoubtful question of law arises, or when there has been a miscarriage of justice. I think this will include nearly all cases—I exclude the question of absence of jurisdiction—in which appeals have been allowed by the Privy Council. Therefore, we have to apply our minds to consider whether, in this case, there is an important question of aw, or whether there is a miscarriage of justice, and whether there has been any want of jurisdiction shown by the commiting Magisttrate or the High Court. As to the question of jurisdiction, we are all of opinion, without doubt, that this prosecution was instituted under the authority of Government, and that, to use the words of the present Code, that "this complaint was made by th- order or under the authority of Government." There is no special mode laid down in the Code, whereby the order or the sanction of the Government is to be conveyed. In this case the prosecution was conducted by the Governe ment Solicitor, instituted by the Oriental Translator to Government, and he produced the written order of Government to institute the plaint. Now, although the plaint must contain undoubtedly the written order—if written order is required—there is nothing in the Code to show that it must specify the exact article in respect of which the plaint is made. On that point it would be puerile to send the case before another tribunal. The other ground upon which Mr. Russell has asked us to certify that it is a fit case to send to the Council is that there has been misdirection, and he based his argument on one major and two minor grounds. The major ground is that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion ; that appears to us to be going much beyond the words of the section, and we need say no more upon that ground. The first of the minor points is that Mr. Justice Strachey, in summing up his case to the jury, stated that disaffection meant the absence of affection, but, although, i that phrase had

tood alone it might have misled the jury, yet, taken in connection with the context, we think that it is impossible that the jury can have been misled by it. That expression is used in connection with the law as laid down by Sir Comer Petheram in Calcutta in the *Bangobasi* case. There Sir Comer Petheram, instead of using the words "absence of affection," said "contrary to affection," and if the words "contrary to affection" had been used instead of "absence of affection" in this case, there can be no doubt that the summing would have been absolutely correct. Taken in connection with the context it is clear that by absence of affection the Judge did not mean the negation of affection, but some active sentiment on the other side. Upon that point we cannot certify that this is a fit case for appeal. In this connection, it must be remembered, that it has not been alleged that there was a miscarriage of justice. The last point is in reference to the definition of the word "Government." It is a very minor point, but striking out the words which were not in the original words Mr. Russell has alluded to, we cannot see that there has been any misdirection as to the meaning of the word "Government." We, therefore, think the application must be refused.

APPENDIX A.

Exhibits for the Prosecution.

EXHIBIT A.

Under the provisions of Section 196 of the Code of Criminal Procedure, Mirza Abbas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, Publisher, Proprietor and Editor of the *Kesari*, a weekly Vernacular newspaper of Poona, and against Mr. Hari Narayen Gokhale, of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under Section 124-A of the Indian Penal Code, and any other section of the said Code which may be found applicable to the case.

By order of His Excellency the Governor in Council,

(Sd.) S. W. EDGERLEY,
Secretary to Government.

POONA, *July* 26th, 1897.

EXHIBIT B.

Under the provisions of Section 196 of the Code of Criminal Procedure, Mirza Abbas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Keshav Mahadev Bal, clerk in charge or acting Manager of the Arya Bhushana Press in Poona, as printer of the *Kesari*, weekly Vernacular newspaper of Poona, in respect of certain articles appearing in the issue of the 15th June 1897 of the said newspaper, under Section 124A of the Indian Penal Code, and any other section of the said Code which may be found to be applicable to the case.

By order of His Excellency the Governor in Council,

(Sd.) S. W. EDGERLEY,
Secretary to Government.

POONA, *July* 27th, 1897.

EXHIBIT C.

(Translation of three Marathi articles in columns 1 and 2 at page 3 of the issue of the Kesari newspaper dated Tuesday, 15th June 1897, having, at the foot of page 4 thereof, a note tras translated, "This newspaper was (is) printed by "Hari Narayen Gokhale at the Arya Bhushana Press in Budwar (Peth) at Poona and "published by Bal Gangadhar Tilak."

The Shri Shivaji coronation festival here commenced on Saturday, the 12th instant, and was brought to a close last night. The temple of Vithal near the Lakdipul (*i.e.*, wooden bridge) was decorated in excellent style for the festival.

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An image of Shri Shivaji on horseback was installed and around (it) were arranged pictures of Shri Shivaji Maharaja drawn by different artists. The picture drawn specially for this festival by Mr. (Pimpalkhare, the accomplished local artist, representing the incident of Samarth Ramdas Swami and Shri Shivaji Maharaja meeting in the jungle at the foot of Sajjangad and the Samarth exhorting Shri Shivaji, and the 'bust' of the Maharaja executed by Mr. Bhide, were worth seeing. (Some) students having recited *Pada* (songs) in praise (of Shivaji) at the commencement of the festival, Professor Paranjpe read the *Puran.* He had for the text of his *Puran* (reading) the story in the Mahabharat about the exasperation on (his) return (home) of the ambitious Suyodhana at the sight of the *Rajasuya* sacrifice (*a*) performed by Dharmaraja, his thoughts in that connection (and) the conversation he had with Shakunimama and Dhritrashtra (on the subject). The *Puran* reader having with a view to give (his) audience a clear idea of the *Rajasuya* sacrifice, compared it with the Diamond Jubilee, commenced the *Puran* (reading), observing, by way of an exordium, that his was not an attempt to uphold (or justify) what Duryodhan did, but (only) to lay before them the philosophical (1) enquiry pursued in the Mahabharat as to the potency and quality of ambition which inspires all beings, and the innate power it has of elevating a country or a party. Professor Paranjpe's style of speaking is vigorous and impressive, (and) therefore the excellence of the most beautiful picture which Shri Vyasa has depicted of an ambitious mind was, on this occasion, well impressed upon the minds of (his) hearers by the *Puran* reader. "Discontent, (*aa*) is the root of prosperity; but contentment destroys prosperity." (*aa*) These maxims were the sum and substance of the *Puran* (reading). The dissertaton as to how a man even in affluent circumstances prefers death, in his exasperation to the indignity of being trampled under foot by his enemies, and how a discontented man secures co-operation and makes up for the lack of arms (and) missiles by (his) craftiness, and other matters, was specially impressive. After the *Puran* (reading) was over, Professor Jinsivale very earnestly requested the audience to study the Mahabharat. Professor Jinsivale on this occasion said that the reason why Shri Shivaji Maharaj should be considered superior to Cæsar (and) Napoleon was that, while the great men of Europe were actuated by ambition alone like Duryodhan, the uncommon attributes displayed by our Maharaj were not the blaze of the fire of ambition or discontent, but were the outcome of the terrible irritation at the ruin of his country and religion by foreigners. After the (reading of the) *Puran* there was a Kirtan (*b*) by the pious Matangi Bava at night. The verses composed by the Bava himself on the coronation (of Shivaji) were couched in simple language, and as the Bava had all the accompaniments required for the *Katha* (*c*) with him, the *Katha* was very much enjoyed. Veda (*d*) Shastra (*d*) Sampanna Matange had specially come here from Satara for this *Katha*.

(*a*) Sacrifice performed by a universal monarch attended by his tributary princes.—(Sd.) N. L. M.

(1) This may also be thus rendered : "but (only) to lay before them in an elementary form the enquiry pursued in the Mahabharat, &c.")—(Sd.) N. L. M.

(*aa*) This text is in Sanskrit.—(Sd.) N. L. M.

(*b*) Celebrating the praises of a God with music and singing.

(*c*) A legend of the exploits of some God related with music and singing.

(*d*) Learned in the Vedas and Shastras.

On the morning of the 2nd day there were athletic sports in Vinchurkar's *wada.* The students of the New English Schools and the Nutan Marathi *Vidyálayá* and the other schools acquitted themselves creditably in their performance with Indian clubs and on the *Malakhamb* (*e*). The students of the New School show themselves to be proficient in playing *kathi* (*f*), *dandpatta* (*g*), and *bothati* (*h*), &c. We hope that the students of other schools will follow their example (in this matter). The students attending the various schools, as well as the people attending the gymnasia at this place, will not find a better occasion than the festival (of the anniversary) of Shivaji's birth for exhibiting their skill in manly sports. If the managers of the various schools take concerted action in this matter, it is likely to give special encouragement to physical and manly sports amongst boys. We hope that this our suggestion will be duly considered by the Principals of different schools. Well, on the night of the same day a lecture on the subject of "the *Killing of Afzulkhan*" was delivered by Professor Bhanu under the Presidentship of Mr. Tilak. The professor ably refuted the charge of 'murder' which English historians bring against Shri Shivaji Maharaj. The Professor has abundant (or strong) evidence in his possession (to prove) that Pantoji Gopinath was not a servant of Afzulkhan, but was from the first a servant of Shri Shivaji Maharaj. (Professor (*i*) Bhanu having no permission to publish the papers relating to this matter for two years (more) did not place his (documentary) evidence on this (subject) before the meeting) (*i*). It is, therefore, evident that the charge of treachery brought against Pantoji Gopinath is literally false. How was it possible for the Maharaja even to imagine that Afzulkhan, who had undertaken an oath either to seize Shivaji and bring him alive or to kill him and bring his head to Vijapur, and who had on (his) way trodden under foot the goddess of Tuljapur and the Vithoba of Pandharpur, meant really to treat with him? What treachery did the Maharaja commit if he went to meet Afzulkhan on the Machi (*j*) of Pratapgad after making every preparation for battle for his (own) safety? The English historians assert that the Maharaja was the first to thrust in the *Wagnakhs* (*jj*); but we see it stated in two *bakhars* (*i.e*, memoirs) one of them written 30 years after the death of the Maharajah, and the other about a 100 years after (his) death, that Afzulkhan was the first to strike (Shivaji). Even if we assume that the Maharaja was the first to strike Afzulkhan, what right has any writer to call that man a murderer, who, while nine years of age, had divine inspiration not to bow down his head in the slightest degree before the Mussulman Emperors? If Mazzini of Italy dons a mourning dress from (his) ninth year for the loss of the independence (of his country), why should not the Maharaja, even at a tender age, be stirred to put forth prodigious efforts for protecting the (*k*) walking and speaking depositories of knowledge (*k*) and the kine which are the living index of our prosperity?

(*e*) A pillar on which the athletes performed their feats.

(*f*) A stick.

(*g*) Exercise with a fencing stick in one hand and the weapon called *patta* in the other.

(*h*) A staff of bamboo with a top knot or bunch of cloth.

(*i*) These brackets are in the original.

(*j*) Level ground at the foot or between the foot and summit of a mountain.

(*jj*) A weapon resembling a tiger's claw.

(*k*) *i.e.*, the Brahmins.

How can English writers have the audacity to belaud Clive and Warren Hastings who were incomparably inferior to the Maharaja, and whose careers were fraught with foul deeds? Is it not a deliberate outrage to the purity of truth that the pen of the same English writer whose (code of) morality refrains from applying the epithet "rebel" in speaking of Washington, calls Shivaji a rebel? The history of Europe cannot show even a single upright man of Shivaji's type. History will find fault with Shivaji, (but) from the point of view of ethics, his act does not merit censure. How can the European science of ethics, which has "the greatest good of the greatest number" as its basis (or principal axiom), condemn Shivaji for abandoning a minor duty for the purpose of accomplishing the major one? In the Mahabharat a man of this type is called "*Buddha*" (*l*). The Professor concluded (his discourse on) the original theme with the declaration that, even if the Maharaja had committed five or fifty more faults (? crimes), more terrible than those which historians allege Shivaji committed, he would have been just as ready, as at that moment, to profoundly prostrate himself a hundred times before the image of the Maharaja.

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At the conclusion of the lecture Professor Bhanu said: Every Hindu, every Maratha, to whatever party he may belong, must rejoice at this (Shivaji) festival. We all are striving to regain (our) lost independence, and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person who with a true mind follows the path of uplifting this burden in the manner he deems fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country from above, cut him off but do not put impediments in the way of others. Let bygones be bygones; let us forget them and forgive one another for them. Have we not had enough of that strife, which would have the same value in the estimation of great men as a fight among rats and cats (*ll*)? All occasions like the present festival which (tend to) unite the whole country, must be welcome. So saying the Professor concluded his speech. Afterwards Professor Jinsivale said:—If no one blames Napoleon for committing two thousand murders in Europe, (and) if Cæsar is considered merciful though he needlessly committed slaughters in Gaul (*i.e.*, France) many a time, why should so virulent an attack be made on Shri Shivaji Maharaja for killing one or two persons? The people who took part in the French Revolution denied that they committed murders, and maintained that they were (only) removing thorns from (their) path; why should not the same principle (? argument) be made applicable to Maharashtra? Being inflamed with partisanship, it is not good that we should keep aside our true opinions. It is true that we must (*i.e.*, should not hesitate to) swallow down our opinions on any occasion when an expression of them might be thought detrimental to the interests of the country (*i.e.*, nation), but no one should permit his real opinions to be permanently trodden under foot. Professor Jinsivale concluded his speech by expressing a hope that next year there will be witnessed greater unity amongst the various parties in Poona on the occasion of this festival.

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(*l*) Means in Sanskrit "enlightened."

(*ll*) This sentence may also be rendered thus; the more the occasions like . . . the whole country the better.

(Translation of two Marathi articles in columns 2 and 3, at page 3, of the issue of the *Kesari* of the 15th of June 1897.)

After the conclusion of Professor Jinsivale's speech, the President Mr. Tilak commenced his discourse. It was needless to make fresh historical researches in connection with the killing of Afzulkhan. Let us even assume that Shivaji first planned and then executed the murder of Afzulkhan. Was this act of the Maharaja good or bad? This question which has to be considered should not be viewed from the standpoint of even the Penal Code or even the Smritis of Manu or Yagnavalkhya or even the principles of morality laid down in the western and eastern ethical systems. The laws which bind society are for common men like yourselves and myself. No one seeks to trace the genealogy of a Rishi nor to fasten guilt upon a king. Great men are above the common principles of morality. These principles fell in their scope to reach the pedestal of great men. Did Shivaji commit a sin in killing Afzulkhan or how? The answer to this question can be found in the Mahabharat itself. Shrimat Krishna's advice (teaching) in the Geeta is to kill even our teachers (and) our kinsmen. No blame attaches (to any person) if (he) is doing deeds without being actuated by a desire to reap the fruit (of his deeds). Shri Shivaji Maharaja did nothing with a view to fill the small void of his own stomach (*i.e.*, from interested motives). With benevolent intentions he murdered Afzulkhan for the good of others. If thieves enter our house and we have not (sufficient) strength in our wrists to drive them out, we should, without hesitation, shut them up and burn (*m*) (them) alive. God has not conferred upon the *Mlenchhas* (*n*) the grant, inscribed on a copper plate, of the kingdom of Hindustan. The Maharaj strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well; get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagvadgeeta and then consider the actions of great men.

After making the above observations in connection with the original theme, Mr. Tilak made the following remarks *relating to the concluding portion of Professor Bhanu's address*:—A country which (*i.e.*, a people who) cannot unite even on a few occasions should never hope to prosper. Bickerings about religious and social matters are bound to go on until death; but it is most desirable that on one day out of the 365 we should unite at least in respect of one matter. To be one in connection with Shivaji does not mean that we are completely to forget our other opinions. For quarrelling there are the other days of course. We should not forget that Ram and Ravan felt no difficulty whatever to meet in the same temple on the occasion of worshipping (the God) Shankar. After the lecture, Pad (verses) of the Sanmitra Samaj and Maharashtra Mela were sung, and this brought the second day's (celebration) to a close.

On the third day Professor Jinsivale delivered a very long lecture which was replete with information. As it is not at all possible to compress Professor

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(*m*) The text of 'burn alive' may, on the authority of Molesworth's Dictionary, be translated "oppress or torment (them) exceedingly."

(*n*) The generic term for a barbarain or foreigners, *i.e.*, for one speaking any language but Sanskrit and not subject to the usual Hindu institutions.

Jinsivale's address in a brief space, we cannot give even a summary of it to-day. We are glad to say that the Kirtan of the pious Ghamendi was, as usual, worth hearing. He took up the same story (subject) of the assassination of Afzulkhan, and though it was (narrated) in the old style, it was full of new thoughts, as is usually the case with the Buva (*i.e.*, Preacher).

A true translation,

(Sd.) N. L. MANKAR,
Sixth Translator, High Court.
30th July 1897.

H. I. M.'s High Court, Bombay,
Translator's Office, 19th August 1897.

EXHIBIT D.

(Translation of a contribution of Marathi verses printed in column 2, at page 2, of the issue of the "Kesari" newspaper, dated Tuesday, 15th June 1897, having at the foot of page 4 thereof a note, as translated, "This newspaper "was (is) printed by Hari Narayen Gokhale at the Arya Bhushan Press "in Budhawar (Peth) at Poona and published by Bal Gangadhar Tilak."

SHIVAJEE'S UTTERANCES.

By annihilating the wicked I lightened the great weight on the terraqueous globe. I delivered the country by establishing *Swarajya (a)* (and) by saving religion. I betook myself to heaven *(b)* to shake off the great exhaustion which had come upon me. I was asleep, why then did you, my darlings, awaken me? I had planted upon this soil the virtues that may be likened to the *Kalpavriksha (c)*, of sublime policy (*cc*) based on a strong foundation, valour in the battlefield like that of Karna(*d*), patriotism, genuine dauntlessness (and), unity the best of all. Perhaps you now wish to show me the delicious fruits of these. Alack! What is this? I see a fort has crumbled down. Through (mis) fortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! Alas! I now see with (my own) eyes the ruin of (my) country. Those forts of mine to build which I expended money like rain, to acquire which fresh (and) fiery blood was spilled there, from which I sallied forth roaring like a lion through the ravines, have crumbled down: what a desolation is this! Foreigners are dragging out (*e*) *Lakhsmi* violently by the hand, (*f*) by (means of) (*f*) persecution. Along with her plenty has fled (and) after (that) health also. This wicked "*Akabaya*" (*g*) stalks with famine through the whole country. Relentless death moves about spreading epidemics of diseases.

(*a*) Literally, one's own Government, native rule.

(*a*) The text of heaven literally means the Paradise of Indra.

(*c*) One of the five trees of Indra's heaven which yields whatever may be desired.

(*cc*) May also mean morality.

(*d*) The name of the half-brother to the Pandav princes, famed for munificence.

(*e*) The goddess of wealth.

(*f*) There being a pun upon the word "Kara" which means both the "hand" and "taxes," the second meaning of this sentence may be got at by substituting "by (levying) taxes" for "by the hand."

(*g*) The elder sister of Fortune Mis Fortune, *Misfortune* personified.

SHLOK (METRE).

Say, Ye, where are those splendid Mavlas my second (*h*) lives, who promptly shed their blood on the spot where my perspiration fell? They eat bread once (*i*) (in a day) but not enough of that even. They toil through hard times by tying up their stomachs (to appease the pangs of hunger). Oh people, how did you tolerate in the *kshetra* (*j*) the incarceration of those good preceptors, those religious teachers of time, the Brahmins whom I protected (and) who, while they abided by their own religion in times of peace, forsook the darbha (*k*) in (their) hands for arms which they bore when occasion required. The cow, the foster-mother of babes when (their) mother leaves (them) behind, the mainstay of the agriculturists, the imparter of strength to many people which I worshipped as my mother, and protected more than (my) life, is taken daily to the slaughter house and ruthlessly slaughtered (there). "He himself came running exactly within the line of fire of (my) gun?" "I thought (him to be) a bear?"......" Their spleens are daily enlarged!" How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the tribunals of justice; could any man have dared to cast an improper glance (*l*) at the wife of another? A thousand sharp swords (would have) leapt out of (their) scabbards instantly. Now (however) opportunities are availed of in railway carriages and women are dragged by the hand. You eunuchs! how do you brook this? Get that redressed. He is mad. Lift him up and send him at once on a pilgrimage. He is fond of pleasure. Deprive him of his powers, saying that it would be for a time only. This is the way in which royal families are being handled now." What misfortune has overtaken (the land)? How have all these kings become quite effeminate like those on the chess-board? How can I bear to see this heartrending sight? I turn (my) glance in another direction after telling (*i.e.*, leaving with you) a brief message. Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets. Tell them—" how have you forgotten that old way of yours" when with scales in hand you used to sell (your goods) in (your) warehouses. (As my) expeditions in that direction were frequent, it was at that time possible (for me) to drive you back to your own country. The Hindus, however, being magnanimous by nature, I protected you. Have you not thus been laid under deep obligations? Make then your subjects, who are my own children, happy. It will be good for (your) reputation, if you show your gratitude now by discharging this debt (of obligation).

Mark of the Bhawani Sword.

A true translation.

(Sd.) N. L. MANKAR,

Sixth Translator, High Court.

29th July 1897.

H. I. M.'s High Court, Bombay,
Translator's Office, 10th August 1897.

(*h*) "Second lives," *i.e.*, "beloved."

(*i*) Meaning they take only one meal a day.

(*j*) A sacred place, presumably an allusion to the Wai Kshetra.

(*k*) A sacred grass used in sacrifices, &c.

(*l*) The text of these words literally means oblique vision.

EXHIBIT E.

(Translation of a Marathi article printed in columns 3 and 4 at page 3 of the issue of the "Kesari" newspaper, dated Tuesday, the 22nd of June 1897, having at the foot of page 4 thereof, a note, as translated, "This newspaper was (is) " printed by Hari Nárayan Gokhale at the Arya Bhushana Press in Budhwár " (Peth) at Poona and published by Bal Gangádhar Tilak.")

A (certain) person under the signature of "Justice," that is, the deity presiding over "justice," has sent to the *Times* newspaper a translation of one (or) two detached sentences occurring in the two (or) three separate notices (leaderettes) in connection with the local Shri Shivaji festival, published in the last (issue of the) *Kesari*, and has attempted thereby to show that Mr. Tilak has probably in his mind quite a different object in originating the Shivaji festival. Who knows what connection this writer has with "deity presiding over justice"? All we can see is that just as "the deity presiding over justice" is blind; so is probably this writer also; for he ought to have understood this, that when even a brief summary of the speeches that lasted for two hours and a half altogether— Professor Bhanu's for one hour, Professor Jinsivale's for one hour, and Mr. Tilak's for half an hour—could not possibly have been given in one column of the *Kesari*, how, then, could the "report" have been given? Well, even supposing that the sentence occurring in the separate notice (leaderette) of the *Kesari* fell from the mouth of the speaker, still to take only one sentence out of a speech which lasted for half an hour, without looking at its connection with what preceded and what followed (it) and to go on drawing inferences from it *ad libitum*, is, we must say, a sign of folly or malice. While considering how far the assassination of Afzul Khan was praiseworthy or blameworthy from the point of view of morality, Professor Bhanu had also brought forward proofs exactly similar to those of Mr. Tilak; but the only principal point (or gist) of Mr. Tilak's speech was that if (one) going beyond even those proofs and inferences considered (the matter) from the (point of) view of philosophy as inculcated in the Bhagwadgita, still Shri Shivaji Maharaj could not be blamed for such a thing. Mr. Tilak contended that when considering (the question) whether Shivaji Maharaj was liable to blame or not, the circumstance that he was not forcibly taking away what belonged to another, but was trying to regain what he had lost, must also be borne in mind; and while maintaining this, he (Mr. Tilak) used this sentence: "No one had conferred upon the Musalmans the Sanad (*a*) (*i.e.*, grant) to rule." In the notice (written) for the *Kesari* while writing, the word "Mlechh" has appeared for "Musalmans." But that person who, from that circumstance, strains the meaning which nobody has in his mind to include therein the Christians also, and attempts to make it appear to the Europeans that the Shivaji festival has not been originated with a good object, must really be very mean

(*a*) A commission or warrant; a sealed paper of authority, commanding, authorising, appointing, &c.

indeed; and as long as such persons are to be found amongst us, so long the country will never prosper. How can the Editor of the *Times* newspaper understand these latent things? He knows only how to insert a letter when one is received (purporting to be) against such-and-such a person. But we tell the Editor of the said newspaper only this, that if this strange reasoning evolved by his "deity presiding over justice," is made applicable to the teachers of private and Government schools and colleges, then they also will all become disloyal; because they, too, have always been teaching students the history of George Washington who swept off English rule from America, or of the English who murdered their King Charles. We are at a loss to know when our English contemporary will realize that there is no (proper) place but a rubbish basket for the letter of the sort of a person assuming the pseudonym of "Justice," who does not fully possess the common sense even to understand what historical enquiry means. Mr. Tilak, the Sarvajanik Sabha, the Shivaji festival, and now Professor Gokhale also since he has given strong evidence, are disliked by the Editor of the *Times* newspaper. Therefore it is not at all surprising that even if there be any letters censuring the abovenamed individuals or institution (s), but devoid of any foundation, still they will, at some time, be published in that newspaper. The only wonder is that although we are aware of this characteristic of Anglo-Indian newspapers, we again (and again) run up to them for the purpose of causing mischief to our neighbours. Or, what wonder is there even if letters like the letter indited by "Justice" should go to the *Times* from the place from which there was no lack of letters—anonymous or under false signatures—sent to the Plague Committee while the plague was prevalent in the city, with the express object of causing misery to people? This is certainly the outcome of the adverse times that have fallen upon the whole of the country. And we at least cannot properly estimate how much more of collyrium (*i.e.*, eye-salve) will be needed (as a corrective), so that those (adverse times) may disappear and "the Shivyajis" (*a*) from amongst us "may take to the path of the Morays (*b*)." Well; we do not think that such cries of jackals (? *i.e.*, hue-and-cry) will cause any impediment to the Shri Shivaji Maharaj festival. Only the laughers will make an exhibition of their teeth.

A true translation.

(Sd.) N. L. MANKAR,
Sixth Translator.

9th August 1897.

H. I. M.'s High Court, Bombay,
Translator's Office, 1st September 1897.

(*a*) "Shivyajis" presumably means "abusers."

(*b*) Presumably an allusion to Chandrarao Moray and the members of his family who were killed by Shivaji, or his adherents.

EXHIBIT F.

(*One Rupee stamped paper.*)

I, Bal Gangadhar Tilak, hereby declare that I am the publisher of a weekly journal in Marathi named the *Kesari* printed at the Arya Bhushana Press, Poona.

POONA, 22nd October 1887. (Sd.) BAL GANGADHAR TILAK.

Declared before me,
This 22nd day of October 1887. (Sd.) A. H. PLUNKETT,
(First Class Magistrate's seal.) City Magistrate,
F. C., Poona.

True Copy.

(Sd.) A. H. PLUNKETT,
City Magistrate,
F.C., Poona.

EXHIBIT G.

(*One Rupee general stamp paper.*)

I, Bal Gangadhar Tilak, declare that I am the publisher of the periodical work entitled the *Mahratta* and published at No. 25, Budhwar Peth, Poona City.

(Sd.) BAL GANGADHAR TILAK.

POONA, 3rd September 1891.

Declared before me this 3rd day of September 1897.

(Sd.) A. H. PLUNKETT,
City Magistrate,
F. C., Poona.

Seal.

Seal of Magistrate of the
First Class, Poona.

True Copy.

(Sd.) A. H. PLUNKETT,
City Magistrate,
F. C., Poona.

EXHIBIT H.

(*Translation of a Marathi article printed in columns* 2 *and* 3 *at page* 3 *of the issue of the " Kesari" newspaper, dated* 14*th June* 1892, *having at the foot of page* 4 *thereof a note, as translated, " This newspaper was printed and published for " the proprietor at the Arya Bhushan Press at Poona.*")

There was previously published (the news) about Mr. Fagan, the Forest Officer, Satara, having fired a bullet at a Dhangar's (*a*) wife, thinking (her) to be a bear. Proceedings having been instituted (in this matter) the final resolution of Government is now published, wherein, without blaming Mr. Fagan, the Government also have, exactly like the Saheb aforesaid, shed a few tears which cost nothing and merely with that have disposed of this matter. It is plain that (now that) the tears of Government and of Fagan have commingled, not even (so much as) smoke will now issue out of this affair. We too admit that the bullet which the man Fagan fired at the female Dhangar bear might have been fired at by mistake ; but even for a person committing murder by mistake the Penal Code provides a two years' sentence ; what is that for ? Indeed, sport and blunder are close at the heels of man ; but only they cost the frogs in the tanks and the bears in the forest their lives. If Mr. Fagan's mistake was like the lightning falling all of a sudden from the sky, that would have been excusable. But we have strong doubts how far a Saheb deserves thus to be excused who with his eyes open draws with his (own) hand the trigger of the gun. If Fagan had been in place of the woman and the woman in place of Fagan, would justice have been administered in the same way ? If to commit a murder by mistake were merely an offence cognizable by a Civil Court, then there was no reason whatever to include the abovementioned offence after expressly amending the Penal Code. The fear of punishment is necessary only for the purpose of preventing the recurrence of such mistakes. We understand that Fagan has in some way settled matters with the woman's relations ; but in what kind of way has not yet transpired. Besides, if the white boys should think that by thus amicably settling matters and by shedding a few gratuitous tears, if not from the eyes, from the pen at any rate, such mistakes are digested, (*b*) then the black bears will have before long to leave India and to set themselves on the way to heaven. The justice administered is quite in keeping with the *regimé* of Lord Harris. It is therefore no use writing further (on the subject).

A true translation.

(Sd.) N. L. MANKAR,
Sixth Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 8th September 1897.

(*a*) A caste of Shudras or an individual of it ; they are shepherds or herdsmen and weavers in wool.

(*b*) *i.e.*, so disposed of as to permit no fear of punishment.

EXHIBIT I.

(*Translation of portions of the Marathi leader* (*a*) *printed in columns* 3, 4 *and* 5 *at page* 2 *of the issue of the* " *Kesari* " *newspaper, dated* 2nd *October* 1894, *having at the foot of page* 4 *thereof a note, as translated,* " *This newspaper was printed* " *by Hari Narayen Gokhale at the Arya Bhushan Press in Budhwar* (*Peth*) *at* " *Poona and published by Bal Gangadhar Tilak.*")

* * * * * * * * * *

Some high officials of Government, instead of finding out the real cause of the differences (riots) between the Hindus and the Mahomedans and directing (their) attention to making attempts to remove it, have sided with the Mahomedans and begun to persecute the Hindus and especially their leaders, that is, mostly Brahmins. At Yeola Mr. Unwin discharges the persons imprisoned (*i.e.*, arrested) by the police, while at Wai Mr. Kennedy sentences those who were playing music as well as those who were not. If Government, with such two irreconcilable decisions before them, do not open their eyes, what fault is there on the part of ordinary people if a bad impression is formed in their minds about the good intentions of Government. And we also ask what for is Government wanted if four different procedures are followed in four (different) places as (in the following cases) :—At Nassik Mr. Unwin administers justice in one way ; at Chopda and Raver Mr. Cumin makes some sort of a totally different arrangement as he likes ; at Poona Messrs. Ommaney and Macpherson disagree, while at Wai, in the Satara District, the Magistrate sentences eleven respectable Hindus, and sends them to Satara on foot. * * * * * *

* * * * *

Some high officials of Government do not approve of this opinion of ours, and unfortunately for us such officials alone being in the ascendant, persecution of the kine and the Brahmins has commenced everywhere. These officials are labouring under the false idea that the present increasing hostile feeling between the Mahomedans and the Hindus is the result not of the mistakes of Government officials, but of the obstinacy on the part of the leaders of the Hindus, especially the Brahmins.

* * * * * *

We do not think it desirable to discuss this subject any more at present, yet we cannot, in conclusion, refrain from once more plainly and emphatically saying that the efforts which are being made at present by Government or its officials to crush the leaders of the Hindus are inconsiderate, unjust and disadvantageous and ruinous to the whole empire. The persecution of the kine and the Brahmins has not been conducive of good to any ruler in India.

* * * * * *

We therefore conclude this article after requesting Lord Harris not to give an occasion for his successor to rectify the blunders committed during his *regime* and after respectfully communicating to his Lordship our humble opinion that the

(*a*) The heading of the article, as translated, is as follows : "Persecution of the Maharashtra Brahmins."

persecution of the Brahmin leaders in the Deccan which have been begun by his Lordship will never be conducive of good in the end.

A true translation.

(Sd.) N. L. MANKAR,
Sixth Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 7th September 1897.

EXHIBIT J.

(Translation of a Marathi contribution of six paragraphs, printed in columns 1 and 2 at page 2 of the issue of the "Kesari" newspaper, dated Tuesday, 6th April 1897, having at the foot of page 4 thereof a note, as translated, "This newspaper was printed by Hari Narayan Gokhale at the Arya Bhu- "shan Press in Budhwar (Peth) at Poona, and published by Bal Ganga- "dhar Tilak.")

THE TEST OF SERVING THE (CAUSE OF THE) PUBLIC.

The interest of our present Government and (their) subjects do not, generally speaking, lie in one (and the same) direction. It is, therefore, not surprising that if any one in his solicitude for the welfare of the subject people begins to exert (himself in their behalf), our Government which calls itself a lover of truth should not bear it ; and the more a person begins (tries) to serve the cause of the people the greater is the exasperation of the corporeal representatives of the incorporeal Government, and when such exasperation reaches its climax the brewing of (the storm of) anger finds its vent in the shape of an action (at law) or of some Resolution. As for me, I am fully persuaded that if anybody wants to see how far any individual is serving the cause of (his) country, he should enquire what is the opinion of the editors of Anglo-Indian newspapers and of Government officers about him. If the opinion is adverse, then one should understand that the best service is rendered to the public cause ; but if it is found that he is much respected at the Government Darbar : (that) the Governor Saheb himself likes him much (and) consults him in every matter ; (that) he gets letters, familiarly addressed, from the Collector Saheb himself; then one should understand that he is some big Rao Saheb or Rao Bahadur ! Whoever thinks that the fulfilment of his life's (mission) consists only in this,—'the Saheb spoke to me, smiled ; he clasped my hand,'—only such a person will not approve of the above test of serving the public (cause). The only reason of laying down this test to-day is that applying it to the Sarvajanik Sabha, people may see how far its (*i.e.*, the Sabha's) serving the public cause satisfies that test.

* * * * * *

All editors of newspapers, when communicating the news that Government has deprived the Sarvajanik Sabha of its right to send in its representations to Government, have expressed their regret—some sincerely, while others out of deference to public opinion. But if it is no sin to speak the truth, then I was glad to hear this news. The reason of (my) being glad was only this, that I became convinced that the Sabha must have been doing real service ; otherwise Government eyes would not have been so pained ! I am aware that there is a

class of people who entertain the opinion that it is no use acting so; nothing whatever can be obtained by annoying the Government; if any advantage, great or small, is to be gained, it will be gained only by suavity and gentle behaviour. But whether you take or do not take things gently, they never fail to do what they want to do. The difference is only this: if you supplicate piteously, they put a lump of sugar into your mouth and then they twist (your) ear; otherwise, they only twist (the ear)! So if the ear-pulling cannot be avoided in either case, then I do not know why by concealing the vexation (which one feels) from the bottom of (his) heart, (and) by cringing and fawning, one should, for nothing, forfeit his claim to be considered at least a human being.

* * * * * *

To die is settled. Now,—whether to die of Navajwar(*a*) or of consumption—that is the only question. In the case of consumption it so happens that the patient does not suffer much pain, gradually wastes away, closes (his) eyes; there is not the least hope of (his) recovery. That is not the case with Navajwar.(*a*) It is true that for nine days (the patient) suffers a continual burning sensation but the result, whatever it is,—whether recovery or death,—is promptly determined. There is, perchance, a hope of recovery. Then of what disease should (one) die? (If we suffer) from one disease, death is sure to come; (suffering) from the other disease, we might, perchance, even recover; owing to one, we shall lie (in bed) wasting away: the result of the other will be prompt. "Better consumption of course,"—so will the above pleasure-seeking class, driving carriages and horses, say; and there are also symptoms already of consumption. So, this affair will develope itself into that very disease!

* * * * * *

It is a very good thing that the Sarvajanik Sabha has been tabooed at the Government Darbar! The Sabha will (in consequence of it) be infused with vigour to serve the public (cause) by taking more pains. The Sabha has found leisure to devote itself exclusively to the performance of its primary duty of teaching the people what their rights are, and how to cause them to be given effect to by dinning them into the ears of Government and by bothering its head, although the Government may in (its) vexation, not only stamp (its) hands and feet, but may throw dust on its own head.(*b*) The Sarvajanik Sabha should certainly pray for redress at the hands of the Government of India, owing to this high-handed conduct of Government; but besides (the Sabha) should send (its) 'agents' to different places, establish Sabhas in the principal towns of (different) districts and through them send the people's representations of grievances to Government direct. Although the Sarvajanik Sabha has been prohibited, still its branches could be opened in different places and they could work. This is the time to show our courage, our pride (*i.e.*, self-respect). Therefore people in different places ought to express their displeasure at this peevish Resolution of Government and to come forward to help the Sarvajanik Sabha. There is no reason for any one to entertain doubt as to how the other members (of a body) can perform (their respective) functions when the head, which is the principal member, is not there. However,

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(*a*) A fever of a certain type. It rages with violence for nine days or proves fatal before.
(*b*) Meaning, it is presumed, may manifest its intense vexation or great displeasure.

if such a doubt is felt, they should bear in mind the fact that the principal *gadi* (throne or seat of Government) at Satara has disappeared, but its branches, spread in all directions, seem still, by the grace of God, to remain instinct with some little vitality.

* * * * * *

Bless the Bombay Government and its advisers. Well have (they) blazoned (their) power! But why should they be backward in exercising zulum in such manner as they like in broad daylight under the name of the law or of a (Government) Resolution? What are you worth that they should not trample you under foot as they like? In the history of the whole world there is not even one instance of the acquisition of political rights by piteous whining and wheeping! Even if you passed seventeen thousand resolutions, got an imitation Parliament (*a*) (Congress) (*a*) held, made speeches feelingly in the yearnings of compassion, still there is as much difference between your Parliament and the English Parliament as there is between a (mock) wedding of a toy bride and bridegroom of girls and a real wedding or between a Native Prince of the last century and a Native Prince of the civilized nineteenth century! What sort of strength do you possess that they should at least give you (their) bare attention, let alone (their) doing or not doing (anything) agreeably to your wishes! But our Government is not of the common sort; it is clever. They will by no means show that they hate you, consider you to be insignificant. They have fully appreciated your worth, perhaps they secretly laugh at your mock sports even; but they will never betray their feelings. Only the Resolution of Government regarding the Sarvajanik Sabha appears inconsistent with their usual wily conduct. Instances very seldom occur of Government getting angry like ordinary men. They will, as far as they can, keep humouring you, saying (to themselves) 'they (*b*) have been well occupied!'

* * * * * * * *

The poor on account of the famine, the poor and the rich on account of the epidemic, and all persons on account of the Government annoyance "(*c*) feel sad; where (is one) to go now (*c*)." Things have come to such a pass. It remains to be seen how many can see the way. Finally,—

(*a*) The call of death cannot be avoided: trying to save the body (you) cannot save (it). (*d*) Being thoughtful, you do not understand. What is to be done? (*a*)

DASANUDAS. (*e*)

A true translation.

(Sd.) N. L. MANKAR,

Sixth Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 30th August 1897.

(*a*) The brackets are original.

(*b*) *I.e.*, people.

(*c*)—(*c*) This is apparently a quotation from some poet.

(*d*)—(*d*) This passage may also be thus rendered: 'Being thoughtful do you understand what should be done?'

(*e*) Lit., 'slave of a slave'; a title assumed for one's self by an earnest humble speaker.

EXHIBIT K.

[*Translation of a Marathi letter printed in column* 3, *page* 2, *of the Kesari* nawspaper of 4th May* 1897.]

SHRI RAMJAYANTI (*a*) AND SHIVAJAYANTI (*b*).

We have many birthday celebrations and jatras (*c*). In each town, each village and even each hamlet jatras (*c*) are held, but they do not prove so useful in our (country) as in western countries. Everywhere we observe that a liking for jatras (*c*) has disappeared, while empty pomp and pageantry have very much increased. Great festivals have shared the same fate as the smaller ones. If difficulties, however trifling, come in the way of the (event) to be celebrated, (all) feeling of love for it disappears, and (people) keep running away and hiding themselves in confusion for (the protection of) (their) evanescent bodies. The last Ramnavmi (*d*) is an instance in point.

Rumours, as usual, flew about thick even before (the day of) Ramajayanti(*a*) (arrived) and they had also a partial effect on the worshippers. Without having in the mind any fear (or awe) of that which is the source of all happiness and which increases the duration of life (the people) (make) tireless exertions to save (their) wealth and (their) hollow reputation! Howbeit Ramnavmi (*d*) was duly celebrated. On such occasions the townsmen in their (holiday) attire visit the temple (of the god) and return (home) after casting a hurried glance at the idol and sit talking over their fated troubles about the plague. None (cares to) hear the Katha (*e*) (or) to repeat mentally the name of Rama (or) to look at Rama's image; the Kathekari (*f*) anyhow disposes of the affair to earn (his) wages, (while his) hearers are thinking about (their) shoes and their domestic affairs and some of them are amusing themselves. Even before 12-30 (*g*) when (the ceremony of) the birth (of Rama) takes place, many people return to their homes thinking that they have witnessed (the ceremony of) the birth of Rama. The birth (day) of Rama has been (up to) this day celebrated for thousands of years in this fashion and I wish that it should also be celebrated in future. But from the point of view of (the good of) society, even lakhs of such festivals and the knowledge by all young and old of (the story of the) Ramayana will be productive of no good. (Even) a child will be able to say that the Ramayana describes the death of Ravana at the hands of Rama, but no one thinks why (and) for whom it was that Rama killed him and why the whole of that history

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* The foot-note on page 4 of this issue, as translated, is as follows:—"This newspaper "was published by Hari Narayan Gokhale at the Arya Bushana Press in Budhwar (Peth) "at Poona, and published by Bal Gangadhar Tilak."—(Sd.) N. L. M.

(*a*) Birthday festival of Shri Rama.

(*b*) Birthday festival of Shivaji.

(*c*) Jatra is a periodical festival in honour of an idol to which pilgrims resort.

(*d*) The ninth day of the light half of Chaitra ; the birthday of Rama.

(*e*) A legend of the exploits of some god related with music and singing.

(*f*) A narrator of the legends of the gods.

(*g*) *I.e.*, 12 o'clock, Bombay time.

was reduced to writing by the great and holy sage Valmiki. (And) who would (think about it)? In the first place, those who hear the Ramayana are old folks who turn away from (their) duty. The only thing they do is to repeat mentally (the name of) Rama with implicit faith. As young boys are endowed with capability, it is they who ought to hear such works as the Ramayana (and) the Bharata. The adage of the Puraniks (*h*) पुराणांतलीं वांगीं पुराणांत Puranantalin Wangin Puranant (*i*) has itself been the cause of the destruction of this sense of duty (amongst the people); and this having continued into force up to this day the Purans have lost their value.

A thoughtful perusal of the life of Shivaji Maharaja from beginning to end will make it evident that it was he alone who made use of the story told in the Ramayana in all its details. To the best of my limited understanding the following is the story (of that epic): "During the rule of King Ravana, many Brahmans were harassed, gods were persecuted (and) sacrifices, &c., were no longer performed. Ravana was, of course, doing what he wanted to do. The Brahmans did not pray to him or to human beings, or to any other thousand-mouthed Ravana for deliverance from his oppression, because they were fiends after all. On one occasion all the kine and the Brahmans with fervid devotion and confidence appealed for protection to the Almighty God Himself. How could the merciful God remain patient any longer? He at once gave an assurance to the kine and the Brahmans! Lo! what a wonderful thing then took place! The all-pervading God assumed the human form and played (many) a pastime to serve as examples to human beings. To rescue the kine and the Brahmans (from oppression), he, not minding (his) affection for (his) father and to the great grief of (his) mother, suffered (the woes of) exile in the forest for 14 years. He hardened his frame by living on bulbs and roots. During his residence in the forest he formed a friendship with the monkeys and specially with Marutiraya; and aided by the monkeys of the forest, God, in the form of man, killed that most powerful Ravana, who, though living in a small island, had thrown into prison even the gods of the thirty-three orders, and whose favourite repast was human beings; and (thus) released all the gods from imprisonment. The bell which rang in heaven at the time of (Rama's) victory did so only because he had destroyed the powerful demon-warrior by fighting with him. Similar in character was the fight between the inexperienced and slenderly-equipped Shri Shivaji Maharaj and the mighty Afzul Khan. God gets such great deeds performed at the hands of human beings themselves (and) therefore agreeably to the adage "if a man exerts himself he will rise from the condition of man to the position of God," man ought to do (his) duty. We are now reaping the fruits of our dereliction of duty in the past and in the present. Does not the above show that Shri Shivaji turned to good account (his) hearing of the Ramayana? Now-a-days we hear the Purans or read stories from books, but the only thing we fail to do is to form a firm resolution in our minds after (due) consideration and to conduct ourselves in a proper manner. The only things we take pride in and which form the subject-matter

(*h*) A public expounder of the Purans.

(*i*) *I.e.*, the precepts inculcated in the Purans (should be left) in the Purans (*i.e.*, where they are), *i.e.*, need not be observed.

of our thought are the writings of one, the nice replies given by another (and) the speeches of a third. So will (our) young men, instead of doing this, imitate during their life-time, most of the things recorded in the life of Shivaji and in the Ramayana? Otherwise it will be just the same whether the festival is or is not celebrated for hundreds of years more. Let that pass. It is, therefore, (my) wish that all Hindus shall at the time of the Shivajajayanti think over and cogitate upon the doings, the courage, the firm resolve, and the ingenuity of Shivaji, and instead of supplicating the authorities for protection lay all (their) complaints before God and lovingly implore Him and perseveringly ask Him again to create among us a Shivaji simlar to this. Will (the remembrance of) all the following things, *viz.*, the present famine, the arrangements made regarding it, the deaths brought on by the "politicality" (*a*) of Government, the epidemic of fever, the oppressive measures (resorted to) for its abatement and effects produced by them be kept alive by meditating (upon them)? Otherwise, the people (think themselves) free the moment the Queen utters the formula of (these) four words (namely) "Starve not in famine." But the number of those dying by the famine is going on increasing (we) become pleased, when, the people having already undergone miseries and the gods suffered troubles and Garud (*b*) (*c*) (who is one for all Hindus) (*c*) having been destroyed, in consequence of the zulum practised on account of the epidemic of fever, a Governor afterwards expresses his "serget" for those occurrences!! Hollow words did not please Shivaji. Let not, therefore, such a thing happen. Let this be known. The date 2-5-97.

(Your) obedient servant,
GANESH.

A true translation,
(Sd.) N. L. MANKER,
Sixth Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 6th September 1897.

EXHIBIT L.

(*Translation of a Marathi article printed in column 5, page 2, and column 1 page 3, of the issue of the "Kesari" newspaper, dated 4th May 1897, having at the foot of page 4 thereof a note, as translated, "This newspaper was "printed by Hari Narayan Gokhale at the Arya Bhushana Press in Budh- " war (Peth) at Poona, and published by Bal Gangadhar Tilak."*)

There is no doubt that many people will have their lost courage revived on hearing that several of the soldiers, who have come here for the purpose of inspecting the houses, are to go back after eight days more. Everybody already knows now of the excess committed by these soldiers during the Rand *régime*: and at last even the truth of what we had written is becoming manifest, not only here, but even in other places to people like Anant. It is true that Her

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(*a*) *Sic.*
(*b*) The bird and vehicle of Vishnu.
(*c*)—(*c*) These brackets are original.

Majesty the Queen, the Secretary of State and his Council should not have issued an order for needlessly practising zulum upon the people of India without any special advantage to be gained, and that the Bombay Government should not have entrusted the execution of this order to a suspicious, sullen and tyrannical officer like Rand; and for this one cannot sufficiently blame the Home Government as well as Lord Sandhurst. But in our opinion it is the duty of our leaders to find out some contrivance for the protection of our people when it has once been settled that Government is to practise zulum (and) when we are convinced that no one up to the supreme authority will and does afford any redress for this zulum, as this order has been issued directly by the Home Government itself. At such a time it is of no use merely to cry out in the name of (*i.e.*, against) the person practising zulum. As when a house is on fire the property in it is not saved by merely fuming and chafing at the incendiary; but a fire-engine (or pump), &c., has to be brought to save the house as far as possible, even so is it with the present state of things. In our opinion there will be ample time hereafter to revile Government for its oppressive conduct. The dependence upon others which Lord Sandhurst (has) manifested in the matter, both of the plague and the famine, is truly deplorable. But what answer are we to give if any one asks us the question, whether our leaders tried to do anything in suppressing the fire which has at present spread in the city under the orders of Lord Sandhurst and of the Home Government, beyound remaining out of the city and clamouring (from there)? Really speaking, this was surely the time for the leaders and the rich people of Poona to take the lower classes by the hand and assist them and prove the reality of their leadership. But it is very deplorable that this occasion has not been taken advantage of as it should have been. Did we even try to be serviceable to the poor people by giving them this assurance:—"Government is oppressing you, but we are prepared to assist you with our body and our purse (*a*) (not with words) (*a*) as much as it lies in our hand?" No. Then we should think for ourselves in what manner we are the leaders of the people. The soldiers committed whatever excesses they could; (they) defiled (our) temples, burnt down (our) slabs and mullers and pots, and wherever they found an opportunity to do so they even put into (their) pockets things, great and small; but we were not only unable to seize even one of them by the hand, but even failed to take such other measures in concert as were necessary. We have already indicated before what these measures are. All the (mere) reviling at rain when it begins to fall with violence would be unavailing for (our) protection, but umbrellas must at once be taken to keep it off, even so we must regulate our conduct at the present time. Directly the Plague Act was passed, we should have observed in what direction the wind was to blow and should have begun to take steps for our protection; but without doing anything of the kind the wiseacres first betook themselves to flight and, like driving she-goats (while seated) upon a camel, they are now exhorting the villagers—" Never mind even if your heads are broken, but do not bear this zulum. The advice is proper and we also approve of it. (But) what we have to say is only that the intelligent people of

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(*a*)—(*a*) The brackets are original.

Poona should have remained here and should themselves have adopted such measures as would have protected the people, in some measure at least, from this zulum ; and this could have been done if committees for each street had been appointed. But in whichever street we go we find it deserted ; (and) the state of affairs has come to such a pass that " excepting the Telis (*i.e.*) oilmen, and the Tambolis (*a*) " only, nobody can be seen there. Now, after the soldiers go out of the city, all these persons will speedily return and will sit wondering how the inhabitants of Poona could possibly endure so much zulum. Is it not extremely disgraceful to us that in a city like Poona (some) ten or fifteen thousand rupees could not be collected for a Hindu Hospital, and that the person who started it could accommodate only thirty or thirty-five patients and that, too, by charging fees ? What good can result from taking to flight with (our) kit on our back because Government practises zulum ? We should remain in our places and counteract it in a small or large measure as far as practicable. This we are not prepared to do. This much has become manifest from our deeds or from our conduct during the prevalence of the pestilence in our city, that however great a calamity may overtake us, we have not left in us the will, the power, or the capability of protecting ourselves by acting in order and in concert and by taking the poor people by the hand. Just as a town is invested by an enemy, so we are doubly invested by the plague and the soldiers. At such a time the officers of Government should have conducted themselves with gentleness and generosity ; but such is not the case, nor will our clamour be of any avail in bringing this about. Should we not, therefore, take even such measures as we can ? This course of action will not only be religiously meritorious, but it will (also) be possible to learn (from it) a lesson as to how we should act in association on an occasion like this, what measures we should adopt, and how we should find out a way, small or great, for the people to protect themselves even from the oppressive rule of Government. But by our misfortune matters have come to such a pass that we neither want to learn that lesson nor do we want the city which is being ravaged by the plague. We are reduced to such a plight now that if the Government becomes oppressive we have not the ability to punish it ; if we cry out, the Government pays no heed ; we do not understand what the law is and (our) leaders are not prepared to make it convenient to give such physical or pecuniary assistance to the people as lies in their power under the circumstances. And that to in a city like Poona. If our eyes are not opened even now, we can only say that it is our misfortune and nothing else. We cannot write anything more than this.

A true translation.

(Sd.) N. L. MANKAR,
Sixth Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 2nd September 1897.

(*a*) A caste or an individual of it ; they are sellers of betel leaf, areca-nut, tobacco &c.

EXHIBIT M.

[*Extract from an article (printed in paragraphs), appearing on the front page of the "Mahratta" of 23rd May 1897, purporting to be signed by "Philosophy."*]

FREE THOUGHTS.

The plague has brought to our notice many a defect—in the sanitary conditions of the big cities as well as in the moral get-up of the native mind. Bombay is to be rebuilt; if Bombay is to be called "the beautiful" in the true acceptation of the word, the densely crowded parts of the town, the dark dens of filth and dirt, must be pulled down and rebuilt so as to suit the new ideas of sanitation and healthy life. But before commencing the work of destruction, will it not be better for Government to appoint a Commission to enquire into the causes which led to the accumulation of so much dirt and filth, the preordained field for the plague to play its gambols? There may be some truth in the remark that the lower classes of the native community commit unceasingly, though unconsciously, sins both of commission and omission against the most necessary rules of sanitation; but it is sheer folly to say that the native mind is by nature indifferent to the pleasures of a walk along the seaside or in the great gardens of the city. The great bulk of the labourers in Bombay, recruited as they are from the clean and healthy villages of Maharastra and Konkan, do like to live in spacious and clean houses, do know the wholesome effects of the fresh and open air, and do consider it a privilege of their life to roam among the mango trees adjoining their villages.

* * * * * * * *

But the British rule has compelled the helpless peasantry to leave their beloved fields and happy homes and resort to the dirty and overcrowded parts of Bombay. There they live in filthy huts, eat their bread by the sweat of their brow, and return back to their native villages with savings only sufficient to meet the demands of the rigid system of land assessment. The bold peasantry of Maharashtra and the hardy race of cultivators in Konkan no longer shine in the army or navy of the land as in the days of the Peshwas. The dwarfing influence of the British Raj has turned the backbone of Maharashtra and Konkan, once forming the famous cavalry (Hujur Pagas) of the Deccan and the navy of Konkan, their country's pride, into mere servile class of field labourers, destined now to work like slaves for the luxuries of the omnipotent bureaucracy—luxuries far surpassing in vanity and folly the fabulous pleasures of the mighty demons of yore described by the most exuberant fancy of this land of poets.

* * * * * * * *

EXHIBIT N.

[*Extract from an article (printed in paragraphs), appearing on the front page of the "Mahratta," dated 30th May 1897, and purporting to be signed by "Philosophy."*]

FREE THOUGHTS.

The Anglo-Indian dailies of the Presidency are publishing letters complaining of the dull inactivity of the Mahableshwar season this year. A dark gloom has spread over the yearly festivities of the merry-making foreigners—not because of the famine, a calamity to the sons of the enslaved land only, not because of plague, a ghastly terror to the Native populace only of Bombay and Poona, but because many of the rich Europeans of the metropolis thought it prudent to leave the shores of this infected land and seek refuge in the cold climate of their dear homes in England. Some of the big officers of the State have gone to Europe—far away from plague and famine, and the rich foreign element in the Bombay Bar, too, has followed the worthy example of the brave Justices. The European merchants, toiling in the burning rays of the tropical sun to impoverish the country to the best of their abilities, were forced to resign temporarily in favour of the dire agencies of the angry God, the famine and plague, who are now continuing, in a sudden and drastic fashion, the work of destruction already begun by the flow of Indian wealth towards the West. So the young European with ladies of his family is enjoying a trip to the civilised world, leaving behind the members of the Bombay Government and a few missionaries to go through the yearly routine of balls, dances, and dinner parties, greatly missing the company of many of the agreeable members of the Anglo-Indian society, but scarcely condescending, being incomprehensively busy with the different sorts of enjoyments, to peep down into the miserable valleys of Sahyadri—the abode of the poverty-stricken Mavalas of Shivaji.

* * * * * *

Men and women, belonging to that great nation of shopkeepers, cannot but behave like the Marwaris of India. It cannot be expected of them to take care of the interests of those that surround them ; "make the purse full to overflowing," thuswise they are advised who leave the shores of the island of Marwaris in Europe. They are the great worshippers of gold and silver, fully conscious of the charms that lie hidden in the trite saying of Iago, "Put but money in thy pocket." No wonder then that some of the non-official Anglo-Indians, the prototypes of the Indian money-lenders, should be the first to leave Bombay, soon after the outbreak of the plague, to the great abatement of their official brethren, whose duty compelled them to face the plague, bravely or with conscious timidity at heart, we have not sufficient data to infer anywise positively.

* * * * * *

EXHIBIT O.

[*Copy of an article appearing on page 4 of the "Mahratta," dated 30th May 1897.*]

EDITORIAL NOTES.

An Arms Act for the Baroda State.—There is some reason to believe in the truth of the report that the Baroda Government is thinking of introducing a measure which will have the effect of an Arms Act for Baroda. It is not exactly known whose brain is responsible for the conception of such an innovation, though it is alleged that the measure is to be introduced at the instance of the Political Resident. It is certainly only an innovation, and a mischievous innovation too. It cannot be called a reform. And we duly warn the counsellors of the Maharaja that they seem to be sadly mistaking the character of the step they are going to take. Baroda is no doubt a good Government, but lately it has fallen into the bad habit of making foolish imitations of the British Government, and the Act in question is, we assert, one of such imitations. Apart from the intrinsic demerits of the measure, the most serious objection to the innovation is that it is not at all called for by the state of things in Baroda Raj. We do not think that the returns of crime generally in the Baroda State compare unfavourably with those in any part of the British territory. The subjects of the State are, we believe, as harmless *with* arms as the British subjects *without* them. The character of the majority of the subjects of the State, the mild Gujaratis, is proverbially innocent. Nor do we think that the Baroda Government need entertain the fears which our ungrateful and oversuspicious Government feels. The British rulers believe that the subjects, if entrusted with arms, may one day use them against the Government. The belief is partially well founded, for the British Government is an alien Government, and the subjects, in trying to get emancipation, will, *if constitutional methods fail*, have some day to resort to arms. But in Baroda the subjects have a Government of their own. It is also a popular Government. There can be, therefore, no motive for the Baroda subjects to abuse their arms. The chief motive for their abuse being thus absent and the character of the subjects being in itself a guarantee against it, the proposed measure of disarming the people becomes quite inexplicable except by the supposition that somebody in Baroda is making a foolish imitation from his pattern under the mistaken notion that what he is attempting is a real *reform*. But has that unwise counsellor of the Maharaja never heard the loud cry that is being raised throughout British India against the Arms Act? Does it not strike him that an Arms Act must be necessarily demoralising in its effects? If disarming is an insult to a man for being deemed unfit to be trusted with a weapon, it is no less an injury to him, inasmuch as he is deprived of the means of self-protection. The *Amrit Bazar Patrika*, in one of its recent issues, has given a case in which a tiger did much damage to the people simply because they had no arms, and had ultimately to be encountered with sticks, with the result that the brave shikarees were unnecessarily severely mauled. To deprive people of arms is more than to

deprive them of the temporary use of them, for ten to one, under the operation of an Arms Act, men begin not only to unlearn their use, but also to fear it. It cannot be said that the European nations are not desirous of minimising crimes, but has any one of them ever tried to secure that end by the introduction of an Arms Act? It the Baroda authorities are really thinking of introducing the measure in question, we cannot but remark that they are demonstrating a sign of that degeneration which has overtaken the unfortunate British subject. As rulers and also subjects of an independent Native State, they ought to have shown greater spirit, if not wisdom.

EXHIBIT P.

[*Copy of an article appearing on page* 5 *of the* "*Mahratta,*" *dated* 30*th May* 1897.]

INDIAN PRINCES IN LONDON.—It is a pity that some of our Chiefs and Princes have got greatly mistaken notions of loyalty. In their zeal for exhibiting loyalty to the Queen, they go so far as to forget themselves and the high position which they hold in their own land. The unworthy self-forgetfulness is clearly shown by the mania, which has seized some of our Princes, of going to England for the purpose of spreading their gay plumages before the eyes of the British Public. The Queen's Jubilee has afforded them only another opportunity for gratifying their vanity under the pretext of making a homage pilgrimage to the Queen's Throne. These uninvited guests are, of course, unwelcome; nor is even good grace or common courtesy shown by the host in receiving them. But in their eagerness to lick the dust of the Queen's feet, these Princes swallow up ill-treatment and insults too. They invariably pay the penalty of thrusting themselves where they are not wanted; but we have seldom seen any of them taking a wholesome lesson for his future guidance. We feel extremely nervous about these Princes, when we imagine what insignificant atoms they must prove themselves to be in the crowd of the magnificent assemblage that will throng London in the Jubilee time They will attract no notice, at least not a regardful notice. The Princes go before the independent British people, as perhaps the most humbled and whip-tamed of the conquered race of India. And if they catch any notice at all, it must be far from gratifying. The exhibition of the want of self-respect on the part of these Princes is made more glaring and also ridiculous by the fact that they attempt in England all manner of pomp and deport themselves in an obtrusive gay fashion. Reuter announces that the uniforms of the Natives excited much admiration, we fear much irreverent amusement; and that the Prince of Wales "*inspected*" them at the Marlborough House. This Royal inspection, we think, scarcely means any other than the inspections by a Circuswallah of his brutes in the menagerie, or his fancy animals in their cages, preliminary to their being trotted out in the arena under the smack of the whip. We only wish that they may duly feel a crushing sense of their own insignificance as a reward for the dissipation of their energy and their ryot's money in making these unnecessary tours to England. If they want to prove their loyalty, there are thousand other and more respectable and also useful ways of doing so in their own State.

EXHIBIT Q.

[*Translation of the Marathi portion of a bill form partly printed in Marathi and partly in English and having the blanks left therein filled in with writing.*]

	(a)		(a)
Bill Number	*Bill No.* 181.	Kesari	*Kesari*

Bombay

The date the 23-7-97.

(a)
To The Proprietor of the Kesari Newspaper.

To The Proprietor of the Kesari Newspaper.

(e) (e)
Ra : (Rajmanya) Ra : (Rajashri) Dattatratraya Damodhar Panandikar — (a) *Dr.* / Dr.

(a) *Items* Items	(a) *Charges* Charges		
	(a) Rs.	(a) a.	(a) p.
Subscription for "Kesari" for the year 1897, including postal charges in respect of the issues sent by post............	1	8	6
(a) *Total Rs.* Total Rupees	1	8	6

(a)
Errors excepted *E. E.*

(c)
Tukaram Krishnaji

(d)
(*a*) V. J. Datar.

The date the 27-7-97

(a)
for *Manager, Kesari.* Manager, Kesari.

H. I. M.'s High Court,
Translator's Office,
18th August 1897.
M. 92.
B. R. K.

A true translation.
(Sd.) S. G. TRILOKAKER,
Eighth Translator.

(*a*) The text of the portions underlined here is printed in English in the origin al.
(*b*) Thus scored out in the original.
(*c*) Written in pencil in the original.
(*d*) Written in English in the original.
(*e*) These are terms of respects.

EXHIBIT R.

(Translation of what is printed and written in Marathi on an unnumbered page of a book.)

"Kesari" the 15th day of the month of June in the year 1897.

Account of the "Kesari" (a newspaper) published every week.

1	Fadake	By the "post" going to up-country places.				
1	Kaka					
1	Kolagde (?)	Khandesh (white)	810	1	Shanwar Peth	131
1	Tartey	Satara (brown)	911	2	Sadashiv Peth	160(a)
1	Dane	Solapur (yellow)	400	3	Shukrawara Peth	105
1	Kale	Dharwad (deep red)	420	4	Vetal Peth	89
1	Shastri	Indore (pink)	268	5	Raviwar Peth and the Station Side	118
1	Piraj	Nagar (light green)	213	6	Budhwar Peth	141
1	Vaisha (m) paye (m)	Ratnagiri (saffron)	782	7	Kasba Peth	4 × 72
3	in the Office	Baroda (green)	304	8	Camp	9 = 55
4	Sold	Bombay (iron grey)	536			
16						866(a)
		Khadki (red)	223	(b)	going by post.	
		Nasik (white)	197		Bombay	361
		Manuscript addresses	170		Kalyan	75
		Proofs	..		Byculla	0
		Subscribers (to whom) the paper is sent by post	...		Parcels	80
					Vilayat (Europe or England)	3
			5234			1385
		Editors of News-papers	102		Spoilt	12
					Balance	40
						16
			5336(a)			
		In all sent to the post	1453			1453
			6789			
		In all printed	6789			

A true translation.

(Sd.) S. G. TRILOKAKER,
Eight Translator.

H. I M.'s High Court,
Translator's Office, 18th August 1897.
M. 92.
B. R. K.

(a) These figures appear to have been altered in the original.

(b) The text of 'by parcel' is thus scored out and that of 'by post' written above it in the original.

EXHIBIT S.

*Form of declaration to be made by **Proprietor**, Manager, or Publisher of Newspaper.*

1	2	3	4	5	6			7	8	9	10	11
Name of Newspaper.	Name of Manager.	Place of publication.	Language in which published.	Day of the week or date of the month on which published.	Weight in Tolas with rate of postage (see Rule IV).			Number of issues during quarter ending 30th June 1897.	No. of copies to be posted at each issue exclusive of No. in columns 9 and 10.	No. of copies to be sent in packets to Agents for sale (see Rule V) at each issue.	No. of exchange copies (see Rule VI) to be posted at each issue.	Name of Post Office or Offices at which Newspaper is, or is to be, posted.
					Rs.	a.	p.					
Kesari.	Hari Narayan Gokhale.	Budhwar Peth, House No. 25.	Marathi.	Every Tuesday.	Under 3 Tolas.	......	Three pice.	13	5,467	......	97	Poona.

Amount of Postage payable.

(To be calculated from entries in columns 6,7,8 and 9.)

		Rs.	a.	p.
5,467	Copies at the rate of 3 pies multiplied by 13.	Rs. 1,110	7	9
,,	Copies at half above rate multiplied by	,, 0	0	0
		Rs. 1,110	7	9

(Sd.) K. M. BAL,
for Manager,
Kesari.

KESARI OFFICE, POONA,
6th April 1897.

Accepted as correct, subject to the Postmaster-General's approval.

(Sd.)

Postmaster,
Poona.

EXHIBIT T.

[*Translation of what is written in Balbodh character* (1) *on the top ends of the leaves of a cash book stitched together, and the* (2) *heading on the back of the first page and of the portion* (3) *consisting of the heading, the date and the credit and debit entries on the same page.*]

(1)

The *Kesari* and the *Maratha* Cash-book No. I (for) 1897.

(2)

Shri (*i.e.*, prosperity, &c.)

Daily cash (book) of the *Kesari* and the *Maratha*, Poona, Proprietor, the Hon'ble Bal Gangadhar Tilak, commencing from date 1-1-97.

(3)

Daily cash (book) of the *Kesari* and the *Maratha*, Poona, commencing ([a]) from date 1-1-97.

The date the 1st of the month of January in the Christian year 1897, the day of the week Friday.

Cr.

	Rs. a. p.	Rs. a. p.
Balance of the previous day.		......
Credited on the date aforesaid		......
To the amount of the sundry sale of the *Kesari* for the sale of 2 Issues		0 1 0
Ledger page 15, credited to the account of the subscription for the *Maratha* ...		......
Particulars—		
Parashram Balvant Kále, new page No. I. ...	4 0 0	
Dhondo Balvant Joshi, new page No. II...	7 4 0	
Dorabji Padamji (Inward) No. 65 ...	6 6 0	
	17 10 0	
		17 10 0

Dr.

	Rs. a. p.	Rs. a. p.
Debited to the *Arya Bhusan* account		......
The balance of this day, being handed over for being credited, is debited (here) ...	44 7 6	
Ledger page 24—Balance for the next day ...		......
		44 7 6

Forty-four rupees and seven and a half annas. The hand-writing of Narayan Mahadeo Karkun.

(a) The text of the word "commencing" is repeated in the original.

Ledger page 12—

Credited to the account of the Subscription to the *Kesari*.

Particulars—

*	*	*		
*	*	*		
*	*	*	26 12 6	
			———	26 12 6

A true translation.

(Sd.) GANESH KESHAV VAIDYA,
Third Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 2nd September 1897.

EXHIBIT U.

No. 1385.

KESARI OFFICE,
POONA, 27*th June* 1897.

To

MESSRS. WEST END WATCH Co.,
BOMBAY.

SIR,

The term of your Notice about the Watches in the *Kesari* expires on the 29th instant. If you wish to renew the contract, please let me know, so that I will be inserting your Notice from 6th July, and send bill.

Yours faithfully,

(Sd.) K. M. BAL,
for Manager.

(Address on the back of the card.)

MESSRS. WEST END WATCH Co.,
29, Church Gate Street,
Bombay.

EXHIBIT V.

KESARI OFFICE,
POONA, 14*th July* 1897.

WEST END WATCH Co.,
29, Church Gate Street,
BOMBAY.

SIR,

As requested in your letter dated 30th June, I have commenced inserting your Notice from 1st July 1897 in the *Kesari*. I enclose herewith a Bill No. 138 for Rs. 133-5-4 for one year.

While remitting the amount, please kindly send it payable to Mr. K. M. Bal, Acting Manager, *Kesari*, and oblige.

Yours faithfully,
(Sd.) K. M. BAL,
for Manager.

P.S.—On receipt of remittance I will send a stamped receipt as usual.

(Sd.) K. M. BAL.

EXHIBIT W.

Offered Rs. 20 for three months.

No. 1243.

KESARI OFFICE,
POONA, 11*th June* 1897.

To

THE CENTURY PUBLISHING Co.,
BYCULLA, BOMBAY.

SIR,

Yours of the 9th instant duly to hand. A copy of the *Kesari* is sent to your address. Your advertisement requires the space of about 6 inches in a single column. The charge for inserting in the *Kesari* for 6 months, *i.e.*, 26 insertions, will be Rs. 60-10, and for one year, *i.e*, 51 insertions, Rs. 114-12. The charges to be paid in two instalments, *i.e.*, 1st instalment in advance and 2nd after 2 and 4 months.

Yours faithfully,
(Sd.) K. M. BAL,
for Manager.

EXHIBIT X.

No. 1287.

KESARI OFFICE,
POONA, 18*th June* 1897.

DEAR SIR,

Yours of the 16th instant duly to hand. Sorry to inform you that I cannot comply with your request. Charge for 3 months, *i.e.*, 13 issues, will be Rs. 36-9, payable in advance.

Yours faithfully,
(Sd.) K. M. BAL,
for Manager.

(On the back of the Post Card.)
The Century Publishing Company,
Byculla, Bombay.

EXHIBIT Y.

केशरी KESARI.

बील नंबर BILL No. 118. पुणें POONA, 19-6-97.

To the Proprietor of the *Kesari* Newspaper,

केसरी वर्तमानपत्राचे मालक यांजकडे येणें

THE RESIDENT ENGINEER, Dr.

B. B. & C. I. Railway. यांजकडे येणें

Items. तपशील.	Charges. आकार.		
Advertisement charges regarding the notice for the tenders of doubling the line between Dahanu and Sachin inserted in the *Kesari* on the 8th and 15th June 1897, lines 29.			
1st insertion at 4 annas	7	4	0
2nd do. at 3 do.	5	7	0
(Twelve Rupees Eleven Annas only.)			
Total Rs. एकुण रुपये ...	12	11	0

चुकभुल द्यावी घ्यावी E. E.

(Sd.) K. M. BAL,
for Manager, *Kesari*, केसरीचे म्यानेजर.

(On the back as follows.)

150
—
6

No. 3468-97 of 5-7-97.

Certified correct for Rs. 12-11-0, twelve and annas eleven only, and forwarded for payment chargeable to Capital.

BOMBAY,
6th July 1897.
No ____

Sd.______________________

Ag. RESIDENT ENGINEER,

The Chief Auditor and Accountant.

Examined and passed for Rs. 12-11-0.

(Sd.) T. WRIGHT,
for Chief Auditor and Accountant.
Date 7th July 1897.

Passed for

Rs. 12 Annas 11.

Sd.______________________

For Government Examiner, dated 9-7-97.

CERTIFIED to be a true copy
this day of September 1897.
(Sd.) M. H. STARLING,
Clerk of the Crown.

APPENDIX B.

EXHIBITS FOR THE DEFENCE.

No. 1.

[*Translation of what appears under the heading Editorial notes printed in column 2nd, page 3, of the issue of the "Kesari" newspaper, dated this 23rd April 1895, having at the foot of page 4 thereof a note as translated, "This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar (Peth) at Poona, and published by Bal Gangadhar Tilak."*

A good many days have elapsed since we heard the verse (beginning with) "Do resound the name of Shivaji," but no one is met with acting on the lines of the advice conveyed thereby. Some days since our contemporary "Native Opinion" has published a letter of a gentleman who had witnessed with his own eye the deplorable condition of the shrine of Maharaja Shivaji at Raigadh. Reading it we feel as worthless the life of us, the inhabitants of the Maharashtra, and particularly of the Sirdars born in the family of that great personage. The valour of Maharaja Shivaj is of course well known in history. It is not at all necessary that it should be described in ordinary cant phrases. We need cite no other evidence of the immortal fame of Maharaja Shivaji, when Lord Harris, who was a formidable enemy to the interests of the Maharattas, has extolled his valour and made a declaration that the Maharaja Shivaji has made his name famous in history. The said Maharaja Shivaji's tomb is in the Fort of Raigadh, ten miles from Mahad in the Colaba district. It was in that fort that the Maharaja Shivaji was crowned in 1674. The Maharaja had to undergo a good deal of trouble and expense in building this stronghold. The Maharaja held this fort in such high esteem and had such a confidence in its invulnerability that he could enjoy sound sleep when he had locked up its (main entrance) Delhi gate after throwing in the various spoils taken in distant campaigns. In this very fort the dead body of Shivaji Maharaja was interred after the campaign of Jalna and this is that self-same shrine. About that shrine Douglas Saheb says in his book "Bombay and Western India":–

"The tomb of the Maharaja is on the yonder hill. Its interior is covered over with trees and shrubs; large trees have grown out of the stone pavings of its caravansaries; the temple in the vicinity is in a wretched plight and the image therein has been thrown on the ground." He further says, "Nobody now cares for Shivaji; not one rupee is spent on the annual repairs of this tomb of Shivaji Maharaj, who was master of an enormous kingdom acquired after as much bloodshed and expense; who was founder of the Maratha Gadi (throne) and who carefully secured sovereignty for the Rajas of Kolapur, the Bhonsales of Satara and the Peshwas of Poona, by a single person of these. Well our present kind British Government had been annually spending money through the agency of a special Department created for that purpose on the repairs of old dilapidating buildings, temples, and caves. In 1885 our popular Governor Lord Reay, at the recommendation of Mr. Sinclair, issued orders for the renovation of the shrine of the Maharaja at Raigadh and repairs were accordingly made at the time. Since then, the sum of rupees five is annually spent on behalf of the

Government on the repairs of the tomb. That an enormous amount is spent on this work is due only to the endeavours of the said Mr. Sinclair. It is useless to blame the Government in this matter. It is the business of those who were able to set their feet on this Maharashtra owing to the exploits of the Maharaja Shivaji and who may be said as eating his bread till this day. If they fail to do this they will deserve the charge of ingratitude made by foreigners. The people of the Maharashtra should avail themselves of this opportunity " to vindicate the name of Shivaji." We need not at all remark that it would be highly creditable to those generous and grateful descendants of the Maharaja who opened their purses for contributing towards tokens of memory of the insignificant Lord Harris should at least now renovate the shrine of the Maharaja Shivaji, in view of the structures of foreigners against them. It is certain that these Sansthaniks and Sirdars will speedily accomplish this work, if critics like Mr. Douglas call upon them to do so. But that those ordinary people of the Maharashtra who entertain a high respect for the exploits and benefactions of the Maharaja Shivaji should give up their lassitude, hold meetings at different places in view of collecting funds, and thus vindicate their gratitude in the face of the world ought not to be left for us to say.

A true translation.

(Sd.) GANESH KESHAV VADYA,

Third Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, *7th September* 1897.

No. 2.

The " Times of India," Wednesday, May 29, 1895.

The Tomb of Shivaji.

In the year 1885, in noticing the Mahratti poem of Mr. P. B. Joshi on the tomb of Shivaji, we brought to the notice of the Bombay Government, as well as of the Mahratta public, the dilapidated condition of the mausoleum of the founder of the Mahratta Empire, and exhorted them to take steps to put it in a decent condition. Shortly after this a public meeting was convened at Poona, at Hirabaug, under the auspices of Mr. (now) Justice Ranade, Mr. Purandare, and other leading citizens of the town, and it was resolved to send a memorial to Government on the subject, and, if necessary, to raise a fund for defraying the expenses incidental to the repair and maintenance of the tomb. By this time the subject appears to have engaged the attention of the Bombay Government, and as the tomb is situated in the reserve Government forest of Raighur in the Kolaba district, and is, as it were, in the very heart of that famous fortress, it would have been impolitic to hand over the site to the care and custody of any irresponsible party. Government, therefore, wisely took the matter in their own hands, and issued immediate orders for the repairs of the tomb at Government expense, and

the necessary repairs were carried out in the year 1886. Government also issued a resolution sanctioning a small sum being spent annually for the maintenance and repair of the place, and this sum is, we believe, annually utilized for the purpose for which it was intended. This action of Government appears to have satisfied the wishes of such influential representatives of the Mahratta community as the Hon'ble Mr. Justice Ranade and the late Mr. Justice Telang, and, therefore, these gentlemen took no further steps in the matter. But this judicious action of Government does not seem to have satisfied the expectations of some of Shivaji's countrymen in the Deccan, and these admirers of the great Peshwa are now encouraging a movement throughout Maharashtra on the pretence that the tomb is being neglected by Government, that it is in a thoroughly ruinous condition, and that funds are necessary for repairing it and for holding a great patriotic demonstration at the fort of Raighur. If the tomb is under the care of Government, and, as we understand, was thoroughly repaired long ago, it is difficult to see the need for this movement.

No. 3.

The "Times of India," Tuesday, June 11, 1895.

SHIVAJI'S TOMB.

TO THE EDITOR OF THE "TIMES OF INDIA."

Sir,—It appears that there is a strong belief in some Anglo-Indian quarters that it is not with entire singleness of purpose that the Maharattas in the Deccan have set themselves to work to raise a fund for the repairs and maintenance of Shivaji's tomb at Raigadh. And you have, it seems, endorsed this view. One cannot be responsible for anything and everything that comes in the print, whether English or Vernacular, but as far as the movement has gone, I can assure you, as one who personally knows many of the promoters and sympathizers of the movement, that there is not the smallest ground for supposing that there is anything beyond the avowed objects of the movement. It is only sufficient for me to draw your attention to the proceedings of the meeting held in Poona for the purpose. It was the only meeting of the kind, the popularity of the objects of which brought together in a public movement Chiefs Sardars, and the people. It has the full sympathy of H. H. the Maharaja of Kolhapur—himself a lineal descendant of the great Shivaji—as well as that of the Honourable Mr. Justice Ranade, certainly a man of the people.

The old as well as the young generation of the Deccan nobility was well represented; for among those that were present were the Swami of Chafal, the representative of Shri Ramdas Swamy, the spiritual guide of Shivaji, the Pratinidhi of Aundh, who presided at the meeting, the Pant Sachiv of Bhor, the Dabhade Senapati of Talegaum, the Shekhamira of Wai, the Chiefs of Ichalkaranji and of Kurundwad, senior and junior, Purandhore, Khasgiwale, and many others. Some of them are the lineal descendants of the Ministers and the Sirdars of Shivaji. One who saw the large audience of the meeting would not but have been struck with the composition of the gathering. Almost all the influential persons, then present in the town, were to be

seen there. Apart from the strong and influential gathering of the nobility, the meeting had the peculiarity of bringing together all the influential and well-to-do classes of Poona.

The movement is really spontaneous. This can be seen from the fact that public meetings were being held and subscriptions collected in many places in the mofussil. Before the Poona people awoke to the necessity of holding a public meeting to shape and properly organize the movement, the people in the mofussil were already seeking for a central organization to which they might send in their money. A sum of five hundred rupees or more has been collected comprising entirely of contributions in annas, and similar sums have been pouring in without anybody making an appeal, so to speak. This clearly shows the intensity of the feeling of the Deccan people as regards Shivaji Maharaj and the consequent popularity of the present movement The co-operation of the Chiefs and Sardars is mainly to be attributed to the fact that the ancestors of many of them and the patrons of the ancestors of the remaining few owed their greatness to Shivaji. I need not mention here that the question of the repairs and endowment of the samadhi (tomb) had more than once in 1885 engaged the serious attention of many influential persons, notably among them were the late Regent of Kolhapur and the promoters of this movement. Unfortunately the untimely death of the Regent and many other causes, small or great, added to the chronic lethargy of the people. The movement was dropped for a time. Lord Reay's Government, however, did something in the matter. This was alluded to with gratitude by the speakers in the Poona meeting. But what little has been done by Government is really quite inadequate for the purpose. One who has seen how sumptuously endowed are these memorial temples even in small States can well imagine what the feelings of the Maharatta will be when he finds the temple and the tomb built in honour of the founder of the Maharatta Empire in such a state of neglect and destitution—destitute of even the customary pageantry and festivals; while his descendants of the Kolhapur House, or even his servants and their descendants, have the good fortune of having their temples and tombs as much or perhaps more attended to than what they were themselves in their own lifetime.

There is no doubt that the illustrious Shivaji is held in a very high estimation by the educated public, while the uneducated peasantry regards him as the incarnation of the God Shiva. While there are so many relics before them of his mighty deeds, it is only too natural that they should be so regardful for his memory. I admit that non-political movements are generally very rare in Poona, and this fact may lead to a misundestanding and consequent distrust about the present movement. But there is "no use striking the ground, saying it is a snake," as the Maharatti saying goes. Confidence begets confidence, and it is no wonder if distrust on one side should create distrust on the other. In my humble opinion a distinction must be made between movements and movements, and I am sure that the intelligent and sympathetic public, both English and Native, will see that it is a grave political blunder not to appreciate the sincerity of any truly popular movement, and to discredit it on first impressions, or taking as serious the rabid utterances of vulgar persons, whether newspaper writers or others. The Maharatta nation—if I may be allowed to use the term—is trying to do something for the memory of their greatest of heroes, and they expect from intelligent and sober-minded persons, especially from men of civilized countries, not only their sympathy, but guidance and support as well.

Ichalkaranji, 7th June 1895. B.

No. 4.

[*Translation of a Mahratti article printed in column 5 at page 3 of the "Kesari" newspaper, dated Tuesday, the 15th December 1885, having at the foot of page 4 thereof a note as translated, "This newspaper was printed for the owner at the Arya Bhushan Press in Poona."*]

The tomb of Shri Shivaji Maharaj is in a very dilapidated condition and all (people) must have heard that endeavours are being made for a long time for the purpose of collecting subscriptions, &c., for repairing this (tomb). We now hear that it is resolved that the work of repairing (the tomb) is to be taken up by Government and Lord Reay has given orders to the Public Works Department to prepare plans and estimates in connection with that. What Maharashtra individual is there who will not praise this worthy act of Lord Reay Saheb?

A true translation.

(Sd.) ANNAJI B. ANGAL,

Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, *9th September* 1897.

No. 5.

[*Translation of a Marathi article printed in column 1 at page 3 of the "Kesari" newspaper, dated the 30th April 1895, having at the foot of page 4 thereof a note as translated, "This newspaper was printed by Hari Narayen Gokhale at the Arya Bhushan Press in Budhawar (Peth) at Poona and published by Bal Gangadhar Tilak."*]

We are highly pleased to find that (our) article last time about the deplorable condition of the tomb of Shivaji Maharaj at Rayagadh has caused a movement at some places at least. There is the tomb of Rajaram Maharaj at Singhgad and the arrangements there are very excellent. A festival is annually held in the month of Falgun and there are in addition three persons, a *Pujari* (*a*) a *Guroav* (*b*) and a Mali (*c*) specially employed (respectively) for the daily *Puja* (*d*) Naivedya (*e*) and looking after the flower garden. The said expense is carried on by Government. When such is the arrangement regarding the tomb of one of Shivaji's descendants, we do not understand why the tomb of Shivaji himself should be in such a deplorable condition. A student has sent over to us two annas for being spent towards (the accomplishment of) this object. Though this amount is very small there is no doubt that the people of Maharastra will be pleased to see the pride about *Swarajya* (*f*) that has awakened in the mind of the said student. We hope that others (*i.e.*), the *Sardars* and other people

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(*a*) Worshipper.
(*b*) Servant who looks after a temple, &c.
(*c*) Gardener.
(*d*) Worship.
(*e*) Food offering.
(*f*) Shivaji's rule was known by this name. It also means one's own Government.

of Maharastra will come forward on noticing this gift of a student. We will publish in our paper an acknowledgment of any amount of money that anybody may send over to us for this object.

A true translation.

(Sd.) ANNAJI B. ANGAL,

Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, *September* 1897.

No 6.

[*Translation of portions of a leading article printed in columns* 4 *and* 5 *at page* 2 *and columns* 1, 2 *and* 3 *at page* 3 *of the issue of the* "*Kesari*," *newspaper, dated this* 4*th June* 1895, *having at the foot of page* 4 *thereof a note, as translated,* "*This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar (Peth) at Poona and published by Bal Gangadhar Tilak.*"]

A gigantic meeting held for the purpose of repairing the dilapidated samadhi (tomb) of Shri Chhatraputi Shivaji Maharaj.

As announced by us, in our last issue, a grand public meeting of the residents of this place was held in the Hirabag last Thursday, for the purpose of giving an organised character by appointing a Treasurer, Secretary, &c., to the movement now going on for repairing the dilapidated tomb of Shri Shivaji Maharaj. It is no wonder that thousands of people had assembled at the meeting held in the Capital of the Peishwas to perpetuate the memory of Shri Shiva-Chhatraputi whose exploits gave, though for a short time, a high place to Maharastra in Indian History. A good many meetings consisting of three or four thousand people have been held here; and we would not have said that there was anything special in this meeting of Thursday last, if it had been of a similar type. But anybody will admit that the presence of the Sardars of Maharastra, whether it be from an inward sense of the importance of the objects of the meeting or for any other reason, gave the meeting a truly unprecedented character. Indeed it can fairly be said that a meeting of such a character was never held before in Poona * * * *

For the Chaphalkar Swami the descendant of Shri Ramdass the Pratinidhi of Oundh, the Sachiva of Bhor, Ichalkaranjikar, Kurandwadkar and the Senaputi Dabhade of Talegaon and other Chiefs and Sardars were present at this meeting; not only this, but they themselves conducted all the proceedings of the meeting. It must be considered a great good omen that a beginning of this sort should take place with the object of perpetuating the memory of Shri Shivaji Chhatraputi, and we are positive that an endeavour begun on such a basis, can never take a long time to succeed.

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THE COMMENCEMENT OF THE PROCEEDINGS OF THE MEETING.

The meeting was to be held at half-past five and in order to accommodate all people sitting arrangements were made in the open portion of the Hirabag.

According to custom seats were provided for the President and the Sardars on a slightly raised platform. The chairs were arranged thereon according to their ranks. Even at five o' clock nearly the whole space was occupied and about the end (of the meeting) there was an excessive crowd. Shri (mant) Dabhade, Shri (mant) Kurandwadkar, Shri (mant) Ichalkaranjikar and other Sansthaniks came even before half-past five. Soon afterwards came Shri (mant) Pant Partinidhi and Shri (mant) Sachiva. Almost all the prominent gentlemen of the city were present at the meeting and besides there was a very large number of other people. On the dais raised for the President, in the centre, Shri (mant) Guru Maharaj Chaphalkar Swami sat, and there were chairs for Shri (mant) Pant Pratinidhi and Shri (mant) Pant Sachiva on either side. It is needless to say that the first rank is given to Shri Guruvarya Chaphalkar Swami amongst the Maratha Sansthaniks as he is the Guru, *i. e.*, the preceptor of gharane (dynasty), and amongst the other Sansthaniks Shri (mant) Pant Pratinidhi occupies the foremost place by his age, experience and rank. Shri (mant) Ichalkaranjikar, Shri (mant) Bapoo Saheb, and Shri (mant) Bala Saheb Kurandwadkar, Shri (mant) Dabhade and other Sardars, sat on the dais itself on either side of the President. The seats being so occupied, Shri (mant) Senaputi Dabhade of Talegaon read the invitation letter signed by himself and Ra (Rajmanya) Ra (*a*) (Rajeshri) Tilak, and proposed that Shri (mant) Pant Pratinidhi should be elected President, and that the work of the meeting should be commenced. Shri (mant) Pant Sachiva of Sansthan Bhor seconded this proposal.

Then Shri (mant) Pant Pratinidhi, having occupied the Presidential seat himself, stated to the people the objects and purpose of the meeting. He said, "The only object of to-day's meeting is to raise a fund for taking good care of the tomb of Shri Shivaji Maharaj and for erecting a Chhatri (Mausoleum) thereon, and from the interest of the fund so raised to continue the worship (of the tomb) and to hold annual festival celebrations; that at present the British Government have decided to spend four rupees per year for the tomb. But that, as this sum is insufficient, if people were to collect subscriptions and to inform the descendants of the Maharaja who are at Kolhapur of this circumstance, no difficulty would come in the way of making proper arrangements." After this short speech from the President, Shri (mant) Bala Saheb Ichalkaranjikar read to the meeting telegrams of sympathy from the people of Chikodi and from the Hon'ble Mr. Justice Ranade. Mr. Justice Ranade made a further suggestion in his telegram that a permanent fund should be rasied for such a purpose.

First Resolution.

After reading these telegrams Shri (mant) Bapu Saheb Kurandwadkar, the well-known Sansthanic of state in the Maharashtra, proposed the first resolution before the meeting as follows:—"A fund should be collected for the purpose of making proper repairs to the tomb at Raigadh of Shri Shivaji Maharaj and of building a temple, &c., thereon, according to the deserts of (Shri Shiv) Chhatraputi Maharaj and for the purpose of making such arrangements as would secure a permanent establishment, periodical celebrations, &c., so as to preserve the grateful memory of the favours of Shri Shiva Chhatraputi Maharaj for all time."

(*a*) Term of respect.

In bringing forward this resolution Shri (mant) Bapu Saheb showed, on good ground to the meeting, that the views and objects of the present meeting were identical with those of the one held in 1885.

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Second Resolution.

Afterwards, in order to carry out the object of the above resolution, Shri (mant) Bala Saheb Karandwadkar placed the following propositions before the meeting, *viz.*:—"That a Committee of 50 gentlemen, including the leading Sardars, Jaghirdars, Inamdars, Rao Bahadurs, and others, should be appointed, with power to add to their number other great persons in other places, and that Shri (mant) Bala Saheb Natu be appointed Treasurer, and Shri (mant) Senaputi Dabhade, Shri (mant) Baba Saheb Ichalkaranjikar and Ra: Ra: Tilak be appointed Secretaries."

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Third Resolution.

Then Shri (mant) Baba Saheb Ichalkaranjikar rose to propose a vote of thanks for the Chairman. He said: "The pleasant duty of thanking the President Shri (mant) Pant Pratinidhi has been entrusted to me for his acceptance of the Presidentship of this unprecedented meeting and for his carrying its important business to the end. Although Shri Pant Pratinidhi is aged and is attached to old ways, we cannot too much praise his readiness to help with great courage and singleness of purpose, every movement in the interest of the public weal. There hardly remains anything worth mentioning about the objects of this meeting beyond what has been stated by Shri (mant) Bala Saheb Kurandwadkar. But in this connection, I must say a few words about a writing in an English paper which has included Shivaji Maharaj amongst the Peshwas. To say that the Hon'ble Mr. Ranade and the late Mr. Telang and other leaders of those times were of opinion that there was no necessity (of the work) of the Committee of 1885 (to continue), as Government had, by giving help, repaired the tomb, is to state what is entirely erroneous, as will be shown by the telegrams from Mr. Justice Ranade just read to. The previous speakers have stated to you what causes operated to leave the work of the Committee of 1885 unfinished, and I am sure you will not neglect the work any further.

A true translation.

(Sd.) GANESH KESHAV VAIDYA,

Third Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 10*th September* 1897.

No. 7.

[*Translation of the leading article headed*, The Great Festival of Shivaji, *in the* "*Kesari*"* *of* 14*th April* 1896, *page* 2, *column* 5, *and page* 3, *column* 1.]

It has been a matter of constant and painful surprise (to us) as to why we, the people of Maharashtra, did sleep soundly so long? Should we not have to hang down

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*At the foot of page 4 of this Newspaper there is a note, "This Newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar (Peth) in Poona and published by Bal Gangadhar Tilak."

our heads if we are asked by a foreigner how we have up to this day forgotten the event about which we should always be thinking, which we should never forget even in dreams, and which should give a particular turn to our mind. The existence of a people on the surface of the earth who have never made their name resound in history is in a way shameful. Should we not always cherish him in our hearts who has removed this disgrace for us? Again, the people of no other country in the world would have forgotten the great man who laid the foundation of our empire, who maintained our Hinduism, and who gave a particular direction to our religion. In European countries, not only the greatness of their deities, but the names and qualities of warriors are constantly sung by the people. But (we) need not go so far; we have hitherto commemorated the names of incarnations like Rama, Krishna, Hanuman, and others (born) in this country, and are still doing the same. In this view was it not then imperative upon us to have awakened in time? But the past cannot (now) be recalled. The only consolation is that our Maharashtra people have now awakened to their duty and are discharging their debt. At Raigudh to-morrow, *i.e.*, the Vaishakh Shudhu second, our people are going to celebrate the great Shivaji festival.

So long the bones of Shivaji Maharaj have rested in solitude on an uninhabited and desolate mountain fort. It is needless to say that the mountain fort at which people did not even throw a passing glance will to-morrow be full of crowds and will present an attractive appearance on account of *Kathas*(*a*), *Kirtans*(*a*) and other devotions. Any one will admit that the work of these people of Mahad, who have brought this festival into prominence, is deserving of credit. It seems likely that this being only the third year of to-morrow's celebration, it will not assume that appearance which it deserves. Still, that this affair has at last commenced is in itself a matter for joy. It is rash at once to expect that festivals like this should assume a national shape and have their importance immensely increased. Even in Greece the Olympian and Nymian games and other great festivals that used to be celebrated in ancient times took considerable time before they assumed a national character. Till the days of Salon very few Athenians went to these festivals. But it appears from history that this great man being greatly desirous that his countrymen should attend these festivals and earn prizes, promised rewards of considerable value at the expense of public treasury with a view to encouragement. In Greece there were in ancient times many small states, and these always used to quarrel among themselves. But in proportion to the growth of the importance of the festivals there they became all united. Those athletes, swordsmen or divers who earned prizes in those festivals, when they returned to their States, were held in high estimation and were honoured by the people till their death. At last these festivals rose so much in importance that people from the whole of Greece began to attend them. Not only that, but people from neighbouring countries, *i.e.*, from Egypt, Asia Minor, and others, began to attend. He who will not desire that our would-be festival of to-morrow should attain such importance may well be said to be no Hindu at all.

(Our) readers must bear in mind that the fund which is being raised in the name of Shivaji has no connection with to-morrow's festival. There is

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(*a*) Legends of the exploits of some god related with music and singing.

not as yet formed any definite opinion as to what direction should be given to the festival which will be celebrated (with money) out of this fund, and how it should be arranged, and in what places it should be held. All these matters, of course, will sooner or later be settled by majority. From this (however) no one should suppose that there is no occasion just at present to perform properly our duty in celebrating this festival. Every citizen of Maharashtra must give a helping hand to this festival to the best of his ability. Famous *Puraniks*(*a*), *Hardasas* (*b*), *Shastries* (*c*) speakers, as well as swordsmen, fencers and dexterous riders and gymnasts, and other gifted persons in (this) country must go to Raigudh and adorn the festival (by their presence). It is evident that these men will not at present be honoured in the way they deserve. But we do not consider that after some time these men will return (from Raigudh) empty-handed, the reason is that, notwithstanding that no subscriptions have been received as yet from rich and middle class people. If 15 or 16 thousand rupees have been collected in the name of Shivaji from small subscriptions without much trouble, there is reason to assert that this fund will, in course of time, grow very considerably. Only our people must for some time celebrate this festival by spending money from their own pockets. There are some among us who turn up their noses and describe this festival as a childish movement. But since the number of these is very small, it is not necessary to think much about them. But there is some fear that our rulers will hamper such a festival at every step. Only the other day the Collector of Kolaba had tried to upset to-morrow's festival. Raigudh being included in the forest, the Managers of the festival asked for permission of the Forest Officers, as there was to be a large concourse of people there, and it was also given to them without effort. But our Revenue Officers have a quite different manner, and so it is not that they would sit quiet without giving at least a little trouble. The Managers communicated with the Mamlatdar of Mahad by a *yadi* (letter) with a view to secure Police and magisterial arrangement at Raigudh. But our Mamlatdar Saheb being one who is guided by others put the responsibilities upon the Collector Saheb. What the Collector Saheb wanted happened by itself. What then? Although there were in the *yadi* (letter) express words to the effect that we propose to hold a festival, they were disregarded, and either of his own accord or through the representation of others, the festival was construed (by him) into a fair or pilgrimage, and the law applicable to pilgrimages was found, and a reply was given to the applicants to the effect that as the application was not in time, it was all the same whether permission was given or not, and the permission was refused. As all the arrangements for the festival were complete and invitations had been given to people of outlying provinces, this (circumstance) constituted a difficulty, and therefore the Managers were obliged to go to Mahableshwar and undergo trouble. After going there the meaning of the law was explained to all the Councillors. Even then, the permission could not be had. Ultimately the complaint had to be taken to the Governor Saheb. If Lord Harris had been the Governor of Bombay at this time, he would certainly not have given the permission. On the contrary, he would have given some piece of advice not palatable to the people of Maharashtra. But the present Governor Saheb being generous and good tempered, the Managers were fully heard and permission was given immediately. Therefore

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(*a*) Public expounders of *Purans* (*i. e.*) sacred and poetical works.

(*b*) Celebrators of the praises of the Hindu deities.

(*c*) Those who have studied *Shastras*, or institutes of religion, law or letters.

what objection is there if it is said that he has made us the people of Maharashtra in a way his debtors. Lord Sandhurst has done this act, which indeed obliges us to acknowledge his obligations oftentimes. It need not to be told that after to-morrow's festival is over, some of the Anglo-Indians will try to mislead Government with reference to this festival by writing misrepresentations, because even before this, beginning in this direction has been made to some extent. It is true that we will not be afraid if any one saddles upon us any false imputation, yet considering the temper of rulers towards us, we must act in a way that no room whatever should be given them to attach blame (to us), and therefore it is not necessary that we should suggest to all wise men that the Managers, and the people intending to assemble at Raigudh, should preserve as much moderation as they can in their behaviour, action, and speeches. It is not that to-morrow's festival is to be held at Raigudh alone. Devotion to Shivaji Maharaj is so much aroused in the minds of the people of Maharashtra that, as we learn from newspapers, arrangements have been made to hold similar festivals here, at Junnar, Baroda and other places. Therefore we desire that those who can, should not hesitate to attend the festivals at these places.

A true translation.
(Sd.) ANNAJI B. ANGAL,
for Chief Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, 10*th September* 1897.

No. 8.

[*Translation of portions of a Marathi article printed in columns* 1, 2, 3, *and* 4 *at page 2 of the " Kesari" newspaper, dated the* 21*st April* 1896, *having at the foot of page* 4 *thereof a note as translated, " This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar (Peth) at Poona and published by Bal Gangadhar Tilak."*]

THE FIRST CELEBRATION IN HONOR OF THE BIRTHDAY OF SHRI SHIV CHHATRAPATI AT RAIGUDH.

The celebration of the birthday of Shri Shivaji Maharaj, the first (of its kind) which took place at the Fort of Raigudh last Wednesday, deserves particular attention from every inhabitant of Maharashtra. It is about 75 or 80 years since Raigudh has become desolate, and it is more than two centuries, or thereabouts, since its glory has disappeared. During this (long) interval the fort may have scarcely witnessed a great celebration like the one on Wednesday. The coronation of Shri Shiv Chhatrapati in Shak 1596 (A.D. 1674-75) at this fort was perhaps the last great festival that was here celebrated. That the place of the coronation and of the tomb of that great man who gave the pleasure of independence to Maharashtra for two centuries should have been so utterly forgotten by the Marathas and should be reduced to such a state as (to make one say):—" The position of the mountains strengthens the idea that it is the same"—is (due to) the queer course of time or of our ill-luck * *

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These two difficulties were those of (obtaining) permission. The Fort of Raigudh having been included two years ago in the reserved forest; in the first place the permission of the Forest Officers was needed. This permission was soon got through the goodness of the said officers. The Collector of the Kolaba District, Mr. Lamb, meddled unnecessarily and tried to throw difficulties in the way of this business. It is not known what idea this Saheb Bahadur has got in his mind as regards this festival. The fact is that although there was no necessity whatever for his permission, he made out an argument that there would be shops opened during the festival, and that when there would be a group of shops they would constitute a market; and of his own accord first submitted to the Commissioner a confidential report that the festival could not be held without the permission of the District Magistrate under Act IV of 1862, obtained his (*i.e.*, Commissioner's) permission and issued an order. This order reached the Secretary to the festival on the first of April. It was then indeed very uncertain whether in the (interval of) fifteen days an order from the Government, setting aside this illegal order, would in time come to hand or not and this uncertainty began to make some of the people abovementioned feel some little pride also for their prudence. But fortunately and by the favor of our present Governor, His Excellency Lord Sandhurst, all the difficulties were removed and a Government order was promptly issued directing that the law about markets did not apply to festivals of this kind, and that the permission of the District Magistrate was not necessary and copies of it (order) were despatched to the Commissioner, the District Magistrate and the Secretary to the festival. We are sure that the people of the whole of Maharashtra will very gladly thank His Excellency the Governor for having taken the credit of making the first festival possible in his *regime*, having (due) regard to justice and public opinion, notwithstanding that the subordinate officers had taken it into their heads to put unlawful obstacles in the way of the festival which the whole of Maharashtra thought it was necessary to celebrate, not only this, but which might well be said to be a sort of congress of Maharashtra and which in short the people of Maharashtra were ready to celebrate with great delight.

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The police Bahadurs also graced the hall of the gathering on the occasion of the *Kirtan* (*a*). The Police Bahadurs with their superior officers came to the Fort with great pomp in the morning of the festival and were present in the gathering hall on the occasion of every function of the festival. They left the Fort on the second day of the festival. * * *

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After these addresses were over the Honourable Bal Gangadhar Tilak made a speech, giving a resumé (of what had taken place). In the speech (he impressed upon the audience) that it was the duty of every Hindu to celebrate the festival of Shivaji, that their Rulers would never come in the way of this festival, that a desire to celebrate such festivals should arise in them was but the outcome of the (liberal) education which was so very nobly imparted to them by their Rulers, that they should in this way every year celebrate the festivals of such ancestors of theirs as were very valiant and noble, in order that their memory should be perpetuated amongst them and that to do this is just similar to the celebration of the birthday of their sovereign, Her Majesty the Queen and Empress of India, or to what their Rulers have of late resolved in Parliament to do in England in memory of Oliver Cromwell, one of the most valiant

(*a*) Celebrating the praises of a god with music and singing.

ancestors of the English, or to what the French people do in memory of Napoleon, their great warrior. (He further said) that they should not consider that in entertaining the idea of celebrating every year the festival of their *Chutrapati* Shivaji Maharaj and of taking steps to cherish his memory for ever there was disloyalty of any kind whatever, and that if any body should tell them (that it was so) they should not believe such a representation as true. He assured them that their kind Rulers and Her Majesty the Queen and Empress of India would never be against them in their doing such a thing. To this effect the Honourable Tilak made a speech. * * *

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A true translation.

(Sd.) ANNAJI B. ANGAL,

Translator.

H. I. M.'s High Court, Bombay,

Translator's Office, *9th September* 1897.

No. 9.

The "Times of India," Saturday, April 21, 1894.

THE STORY OF PRATAPGAD.

We are glad to see that our Asiatic Society is not restricting its scope to purely philological and archæological work, as it threatens now and again to do, but also launches out on occasions like that of yesterday into the field of Indian History. Mr. R. P. Karkaria's paper on Pratapgad Fort, delivered last evening, was not only exceedingly interesting but would be attractive to those readers who would not care to follow him in his somewhat minute historical inquiry. Pratapgad is famous in Mahratta history for its connection with the celebrated episode of the meeting of Shivaji with the Bijapur General Afzul Khan in which the latter was killed by the Maharatta Chief. Every one who reads Indian History knows of this meeting and has formed an opinion, got from the ordinary hand-books, about the great Maharatta's treachery,— how he artfully inveigled the frank Mahomedan to an interview unarmed, how he himself was fully armed and armoured, how on seeing "his friend the enemy" he pretended to be in mortal fear, and how, when re-assured by Afzul advancing alone he thrust his treacherous *waghnak* concealed underneath his fingers into Afzul's body in the act of embracing him. Mr. Karkaria discusses this account copied uncritically from Grant Duff, the standard historian of the Maharattas, by ordinary writers, and shows that Duff took it from the contemporary Mahomedan chroniclers who had evidently great prejudices against the Mahrattas, and from Fryer and others who had no source of information, but mere gossip and hearsay, and who also were biassed against the power which was a standing menace to them. By the side of this Mahomedan version adopted by Europeans, Mr. Karkaria put for the first time in English in its entirety the account which the Mahrattas themselves give of it, and which is to be found in their *bakhars* or original chronicles. They hold that it was not Shivaji but Afzul who was anxious for an interview, as he had pledged his honour to the Bijapur Court to bring Shivaji dead or alive in a short time, and could see no other way of redeeming his honour but by captiving him at a pretended friendly

interview. He therefore sent an agent to Shivaji to arrange for a meeting. The quick Mahratta, however, spied out the secret and prepared to hoist Afzul with his own petard. He therefore went armed and armoured. Afzul took Shivaji's head into his hand during the customary embrace and pressed it hard and also struck him with his sword. Shivaji, for his part, plunged his weapon into his adversary's body and despatched him. This version is to be found in the Mahratta *bakhars*, though no historian except Scott Waring and he, too, only casually has tried to do the Mahrattas he justice of putting it by the side of the Mahomedan account. Mr. Karkaria forcibly points out the improbability of this latter and greater probability and credibility of the Mahratta view, and every historian of Shivaji must fairly weigh both sides which seems not to have been hitherto done.

No. 10.

The "Times of India," Saturday, March 7, 1896.

SHIVAJI AND THE PRATAPGAD TRAGEDY.

Mr. Karkaria in a recent address advises the Brahmins to ransack their bakhars and bring into light an authentic history of the glorious deeds of their national hero Shivaji, and to exonerate him from the charge of treachery with which his name has been connected by the English historians, on the unreliable authority, as he says, of partial and biassed Mahomedan historians. But the fact that so many educated Brahmins, labouring as they do under a false impression that injustice has been done to the memory of Shivaji in depicting him in such dark colours, should have failed to vindicate his character in a satisfactory way upto this time, while a stranger, both from national and religious points of view, should come to appreciate his real merits, seems very surprising, and leads naturally to two significant conclusions, *viz.*, first, that either the Brahmins, in spite of their literary attainments and zeal in reviving the glory of their national hero, have failed to find in the bakhars, written in their own language, historical evidences which are so patent to a foreigner or, secondly, the contents of the gospel upon which Mr. Karkaria relies for authority are either not clearly understood by him in their originals, and in learning them second-hand he has been made a scapegoat of by the interested party, or being understood, he has omitted to take into consideration such of them as do not suit his purpose. The former theory will not stand in the face of so many educated Hindoos who have been actually spending their time and energy in doing their duty to their national hero by searching every nook and corner for some hidden bakhars which may throw a new and favourable light on the subject. Attempts are not wanting, I fear, to fabricate brand new bakhars to suit their purpose, and to impose them upon the public as old and genuine ones. The latter theory, however, is not without proof, and I shall deal with this point in the present note.

For the sake of brevity I shall take, for the present, a single episode in Shivaji's life, namely, the Pratabgad tragedy, and show from the evidence of the very bakhars in which Mr. Karkaria has such implicit faith, and upon the so.called reliable authority of which he has based his arguments, how totally erroneous and misleading his opinions are respecting that tragedy. For this purpose I make use of Krishnaji An-

ant Sabhasad's Life of Shivaji [Mr. K. N. Sane's second edition of 1889] throughout this note. It is the oldest, or, at least, one of the oldest bakhars, written in 1694, by an old courtier of Rajaram and an eye-witness of what happened in Shivaji's life-time. For Rajaram, when he ordered Krishnaji Annant to write a life of his father, said: "You should write a life [of my father] from the beginning as you are acquainted with the previous [*i. e.*, Shivaji's] reigme." [*Vide* page 4, para. 1.] Mr. Karkaria also seems to have based his arguments chiefly on the authority of the bakhar as it appears from his remarks respecting Gopinathpant. Grant Duff also refers to this work, which he had obtained from the Raja of Kolhapur and he has lodged a copy of it with the Literary Society of Bombay.

Since Mr. Karkaria holds such bakhars to be more reliable than the histories written by Mahomedan scholars like Khafikhan, it will not be out of place here to remark in passing, at first, that both the bakhar writers and Mahomedan historians are equally partial and biassed in their own way, and that justice requires that if we credit or discredit the one as reliable or unreliable we should credit or discredit the other also in the same way. If, for example, Mr. Karkaria infers from the writing of epigrams like "Kafir ba [not " bar"] Jehannam raft" [The infidel went to hell *i. e.*, died] that its writer was a partial and biassed Mahomedan and hence unreliable, it is but just that he should not omit to draw the same inference with respect to the writer of a bakhar when he takes a similar liberty and likens Afzalkhan to Durydhan, or, worse still, the loyal and brave Dilerkhan to the Demon " Hedamb," who is one of the blackest scoundrels mentioned in Ramayan. It may be remarked also in favour of the witty epigram in question, that it is primarily intended to give the date of Shivaji's death by way of *memoria technica* and not to show dislike of the author for him. The numerical value of the epigram is 1081, Shahur year corresponding to 1680, A. D.

This reasoning apart, I will now turn to the point at issue, and show, by examining the contents of the bakhar, how little the evidence furnished by it bears out Mr. Karkaria's theory, according to which it was not Shivaji but Afzalkhan who had planned to kill the noble Chhatrapati [he was not Chhatrapati then], while the former merely turned the tables on him in self-defence. His principal contention is that "Afzalkhan was a Pathan, and therefore, like other Pathans, he was naturally treacherous. It was, therefore, but natural that he should have behaved treacherously towards Shivaji." How far Mr. Karkaria is justified in calling Pathans naturally treacherous, will be considered later on. Suffice it, for the present, to remark here that Afzalkhan was not a Pathan but a Deccani Mussalman. The foreign, that is to say, Arab, Persian and Afghan element had become nearly or quite extinct at the time of the accession of Mahmud Adilshah (1626-1656 A. D). Foreign enlistment was discontinued and the Moghal armies absorbed all Arab, Persian and Afghan adventurers. At the close of Ibrahim's [father of Mahmud's] reign the Deccani Mussalmans were the strongest party. [*Vide Bombay Gazetteer*, Vol. XXIII, page 424.] It is a very vulgar error which many persons fall into when they think every Mahomedan who bears the appellation of "Khan" is a Pathan. They forget that the word "Khan" is a title of dignity and not an epithet expressive of some clan of race. The present Sultan of Turkey, for instance, is called Sultan "Abdul Hamidkhan," though he is not a Pathan. The inference of treachery on the ground of Afzal's supposed nationality

thus fails, and it, therefore, remains for Mr. Karkaria to prove, to bring the charge home against him that he was habitually treacherous. He must furnish, for this purpose, instances of Afzal's treacherous acts previous to his death, from any history he likes. And so long as he does not furnish us with them he cannot justly say that it was Afzal who, true to his habit of dealing treacherously with every one, behaved treacherously on the occasion in question also. While on the other hand, how easy it would be to make use of the same line of argument in proving from the evidence of the bakhars themselves, that to use treachery to gain his object was Shivaji's second nature, will be clearly seen from the following acts of treachery committed by him within a short period of three or four years prior to his murdering Afzalkhan.

1. One Shimga holiday Shivaji went to his step maternal-uncle, Sambhaji Mohita, who was appointed by Shahji (the father of Shivaji) to manage his jagir of Supe Mahal, on a pretext of asking for *post* or a holiday present from him, and finding an opportunity, imprisoned him and secured his 300 horses and the great wealth which he possessed. [*Vide* page 6.]

2. The fort of Purandhar belonged to the Bijapur Government. One Nilkantrao a Brahmin, was the commandant of it. He died and his two sons quarrelled among themselves. Shivaji went to them on a pretext to meditate and settle their dispute and finding an opportunity, imprisoned them and took the fort. [*Vide* page 7.]

3. Chandrarao Moré, a powerful Maratha Chief, was reigning in the Konkan. Shivaji wanted to take his kingdom. He, therefore, said to Raghunath Ballall Subnis, one of his faithful adherents: "The kingdom of the Konkan cannot be obtained without killing Moré. None but yourself can do this work." He then sent him to Chandrarao ostensibly to negotiate a treaty. Raghunath acted up to his master's orders, and during a private conference stabbed Chandrarao and his brother Suryaji mortally and escaped from the place. Shivaji then easily took Javali and other places of the deceased Moré. [*Vide* page 8.]

4. Another brother of Chandrarao, Hanmantrao, was still alive and secure in his place of "Chaturbet" near Javali. Shivaji saw that unless Hanmantrao was got rid of, Javali would not continue long in his possession. He, therefore, sent Sambhaji Kavaji Mahaldar to him on a pretext to open negotiations of marriage. Sambhaji went there, and during a private interview, stabbed Hanmantrao to death It may be remarked here that this is the same Sambhaji who figured again in the Pratapgad tragedy, bowstrung the palanquin-bearers of Afzalkhan, and cut off his [Afzal's] head. [*Vide* page 8.]

5. Surve kings were reigning in Shringarpur. Their ministers were Shirkes Shivaji bribed them and made them turn traitors to their lords, and by their help drove the Surves from their kingdom and became master of it himself. [*Vide* page 8.]

This is a list of *some* of the teacherous acts committed by Shivaji directly or indirectly, shortly before the Pratapgad tragedy. They were committed by him not for avenging any wrong, nor in self-defence, but simply for the sake of self-aggrandisement. It must also be remembered that all the victims of this foul treachery were men of his own caste and creed. Nor was he treacherous alone. He was cruel too. "There was in Siuter Khore a troublesome man named Babaji Rav. Shivaji captured and blinded him." [*Vide* page 8.] It may be of interest to see

how Mr. Karkaria will exculpate his spotless hero from the abovementioned charges which the writer of the bakhar himself lays against his name, not, of course, with a view to expose his weakness, but to praise his skill in attaining his objects. It will not be difficult to judge now who was habitually treacherous, Shivaji or Afzalkhan; and which of the two consequently, was more likely to behave treacherously during their memorable interview at Pratapgad.

I shall next show that the evidence furnished by the bakhar in connection with the case is not so much in favour of Shivaji, as Mr. Karkaria alleges it to be, as it decidedly is of Afzalkhan. It was from the beginning the intention of the Bijapur General to capture Shivaji and not to kill him, while the latter had from the very first determined to kill his adversary as will be seen from some quotations from the bakhar.

a. When Afzal volunteered to lead the expedition, he promised the Queen-Regent that "he would capture Shivaji and bring him *alive* to the Court." [*Vide* page 10.]

b. When Afzal arrived at Wai, he thought of a plan "to send [some one] to the king [Shivaji] on deputation, make peace with him and by inspiring confidence in him to apprehend him *alive*." [*Vide* page 10].

c. When Shivaji sent Pantojipant to Afzal to negotiate peace and to induce him to go to Javali, he instructed the Pant also to ascertain, somehow or other, from Afzal's men, what he had in his mind to do with him [Shivaji]. Accordingly, the Pant bribed Afzal's cofidants and elicited from them, it is alleged, the desired information to this effect :—" Shivaji is a rascal. By fighting he will not fall into our hands. We should manage to bring about an interview with him and during it we should *apprehend* him. Such is the plan of the Khan." [*Vide* page 13]. It may be remembered here that the word धरावा [should be captured] and not मारावा [should be killed] is invariably used in the bakhar, in mentioning the plan of Afzal. The writer of the bakhar, partial as he is, does not give the slightest hint of the intention of Afzal to kill Shivaji till he comes to describe the actual scene of their meeting. On the other hand, there is overwhelming evidence in the same bakhar of the intention of Shivaji, from the very beginning, to kill Afzal.

a. When Shivaji heard of Afzalkhan's arrival, he resolved to gather his forces and to give battle near Javali. But his followers advised him not to fight, but to submit and make peace with Afzal. He feared that submission might perhaps lead to a rebel's death. And now mark what an insidious dodge he plays with his timid and credulous men with a view to inspire them with courage for helping him to kill Afzal. He pretended to have seen in a dream the goddess Bhavani of Tuljapur, who said to him ["I am pleased with you]. I will help you in every way. I will kill Afzalkhan by your hand. I [will] make you successful. Do not be in anxiety." [*Vide* page 11.] He mentioned this dream to his principal nobles. He also argued that if he submitted he might lose his life, and it was, therefore, more advisable to fight since the goddess was pleased with him and "he would," therefore, "kill Afzalkhan and reduce him to dust" by her help. It will not be out of place to remark here, that while the goddess was true to her supposed promise in killing Afzal through Shivaji, she altogether failed to keep her promise made to Shivaji on another similar occasion, when she had vouchsafed to continue sovereignty of the

Deccan as far as the Narmada, in his house, for *twenty-seven* generations! [*Vide* page 31.]

b. When the artful Pant induced Afzal to go to Javali, and brought him there, as pre-arranged, he returned to his master, Shivaji, and said, "I have brought Afzalkhan here as desired [by you]. I will now manage to bring about an interview between him and you. You should do your work [then] boldly, *i.e.* [kill him]. [*Vide* page. 15.]

c. The day previous to his interview with Afzal, Shivaji said to Nethaji Palker, his captain, "To-morrow I [will I go to visit the Khan,] kill him [*lit.* conquer] and return to the fort. I [will] then fire [gun] but once. You should then go down and fall upon the Khan's army." He gave similar orders to Moropant Peshve and stationed his chosen men in various places in ambush in the thickets round about the place of meeting. [*Vide* page 15.]

The foregoing are some of the typical quotations from Mr. Karkaria's own gospel, and they clearly explain the intentions of both the parties. In the face of such conclusive and overwhelming evidence, both of Shivaji's habit of acting treacherously and of his intention to act so on the occasion in question, it may be safely assumed, that Mr. Karkaria has either evolved his facts from his inner conscience and not from the bakhars; or that his faculty of weighing historical evidences is very defective. It is for the impartial reader to judge now from the bare outline given above of certain undisputed incidents, whose intention it was from the beginning to kill his adversary treacherously during that memorable interview. That the plan of Shivaji to kill Afzal was skilfully preconceived, will also be evident from his careful precautions to meet every emergency. While the Bijapur General, least suspecting any treachery, or wanting to resort to it himself to kill his opponent, as it is alleged, did not make any such preparations.

I shall next deal with the groundless accusation brought against Afzal of "having attempted to plunge his poniard into the side of Shivaji, in the act of embracing him." Here for the first time Krishnaji Anant, the writer of the bakhar, gives us a hint of Afzal's intention to kill Shivaji, and this is the only argument in favour of Mr. Karkaria; and upon the weak foundation of it, it seems, he has built his whole theory respecting the tragedy in question. It needs, therefore, a careful examination. It must be remembered that the writer of the bakhar himself says, that when Afzal went to the place prepared for meeting, he was accompanied by only four men, *viz.*, Sayyad Banda, a veteran soldier, Krishnaji Pant, his karkun, and two menial attendants. Of these the Sayyad was killed along with Afzal. The fate of the remaining three is unknown. The writer is not consistent in his statement respecting Krishnaji Pant, from the beginning, as will be shown later on. As regards the two attendants they could not have escaped alive to tell the tale of the fate of their master to the main body of the followers of the Khan, which was left behind at a bow-shot distance at Gopinathpant's request, in the face of those men of Shivaji who were lying everywhere in ambush ready to cut off the retreat of the fugitives. The account of the memorable meeting therefore, which has come to our hand, is after all an *ex-parte* one, and its real nature, consequently, may be better gleaned from the events that preceded it than from the representations of the writer of the bakhar, whose judgment was influenced, not only by the reverence with which he regarded Shivaji, whom he considered an incarnation (of Shiv) (*vide* page 19), but by a natural respect for Rajaram, his son, at whose express order he wrote the bakhar. It will

be next seen that of the four followers of Afzal only Sayyad Banda was the man who could and who did defend his master against any possible danger. The Brahmin and the two menial attendants were useless appendages in this respect. Shivaji knew this, and he, therefore, managed to persuade Afzal through the artful Gopinath, to order the Sayyad to stand far aloof. Had Afzal any evil intention in his mind, he would never have allowed this indulgence. On the other hand Shivaji, when came afterwards to the place, was also accompanied by three men, *viz.*, Gopinathpant, his supposed karkun, Jiu Mahala and Sambhaji Kavaji Mahaldar, the notorious assassin of Hanmantroe Moré. Though the latter two were brought in as "huddekaries" or menial attendants, they were both of them good swordsmen and well armed too. As regards the principal actors in the tragedy, Afzal Khan himself had put on a (cotton) gown only and the only weapon which he carried was a जमदाद् (Jamdad, a sort of poniard) and not a large sword as Grant Duff and others think. It was more for show than for use Shivaji, on the other hand, had put on a chain cap under his turban, and a chain armour on his body. It must be noticed also that while the writer of the bakhar is careful enough to say that Shivaji had put on a chain cap under his "mandir" or turban, he does not give us the least hint that he had concealed his chain armour too, under a cotton gown as some think. While the very fact of his having concealed a *beechwa* in his right hand and a *waghnakh* in the left shows that there was nothing but treachery in his mind, and that he wanted to make use of them against his unsuspecting visitor, during the act of the customary embrace. For that was the only opportunity for making an effectual use of such weapons. Moreover, he had cleverly lulled the suspicions of Afzal Khan by calling him his uncle and by making a show of timidity. Now, during the customary embrace both the hands of Afzal had naturally fallen crosswise on the back of Shivaji. To think, therefore, that Afzal would, under such circumstances, attempt, even if he wished, to plunge his poniard into the (left) side of Shivaji is the height of absurdity. For to say that Afzal, knowing as he did that Shivaji had put on a chain armour, tried to wound him at a time when he was in such an awkward position, is tantamount to saying that he (Afzal), a soldier to the back-bone, did not know what sort of protection a chain armour could give to the wearer of it. The real fact probably might have been this: Afzal carried the poniard in his left hand as usual. During the act of embrace that hand naturally came to the left side on the back of Shivaji. The end of the hilt of his poniard, at that time, might have come into contact with the metallic armour of Shivaji and produced the rustling sound to which the writer alludes. And probably this fact was construed by him into an attempt to wound him. That Afzal did not dream of behaving treacherously on that occasion is further evident from the fact tha whereas he, as soon as he received the dastardly blow from his opponent, cried out "Treachery, help," no such cry for help, on the other hand, was raised by Shivaji, as it is quite natural for a man to do under such circumstances, however brave he may be when Afzal first dealt the alleged blow. The partiality of the writer and his attempt to throw the blame on Afzal instead of on Shivaji is further evident from the fact that he construes the warm and friendly embrace given by Afzal to Shivaji, after the Muhammadan fashion, into an attempt on the part of the former to hold firmly the latter into his armpit! But with what intention he did so the author does not clearly explain. Here we have a good example of how ignorance, real or feigned, is ready to put a wrong interpretation on a good or well-meant act. The very word *baghalgir shudan* as used in Persian for an act of embrace shows in what way a Muhammadan

would naturally embrace a friend or visitor. To interpret that passage, therefore, as expressive of Afzal's evil intention is simple nonsense. It will be remembered that the writer gives a similar description of a customary embrace, when he writes of an interview between Shivaji and Dilerkhan. (*Vide* page 35.) The writer there says that "Dilerkhan embraced the King *angrily*. He held him with force for some time." Dilerkhan had a dagger in his hand at the time and he was greatly exasperated too, and yet the writer does not show there that the Khan, who was a real Pathan, and, therefore, according to Mr. Karkaria, a naturally treacherous man, took advantage of that opportunity to plunge his dagger into Shivaji's side. In short, it will be seen from what has been stated above, that the only statement—and it is after all a hearsay one—which seems to be in favour of Mr. Karkaria's theory, has not the ring of truth in it.

As regards Gopinathpant, Mr. Karkaria holds, on the strength of the evidence of the bakhar, that he was Shivaji's and not Afzal's karkun as Grant Duff says. Really speaking, the fact of Gopinath's having been a servant of the former rather than that of the latter has not much bearing on the question, *viz.*, which of the two, Shivaji or Afzal, acted treacherously on the occasion. The fact that Afzal was thrown off his guard and was deceived by the artful and false representations of a Brahmin go-between, be he a servant of Shivaji or Afzal, remains a fact after all. But in laying great stress upon this unimportant point Mr. Karkaria seems to have nothing in his mind but to throw a shade of doubt upon the validity of the English historian's opinion on the tragedy. The fact, however, is that several manuscript copies of the same bakhar do not tally, with each other on this point. One copy does not mention the name of Krishnaji Anant as Afzal's karkun at all. It says on the contrary that Gopinathpant or Pantajipant was Afzal's karkun. And this seems to be more consistent with what the writer says further on in connection with the affair. For example, when Pantajipant returned to Pratapgad from his deputation to Afzal, Shivaji sought a private interview with him at night, and requested or rather entreated him to tell on oath what the Khan in his mind had to do with him saying: "You and I are not different persons (from national and religious points of view). If you save my kingdom I will entrust you with the management of it. I will give you immense wealth too. You should tell me the real state of things." (*Vide* page 14.) Now if Pantajipant was Shivaji's own servant—and a very trustworthy servant too (*vide* page 12)—there was no necessity of solicting him so earnestly to tell the truth and of holding out to him hopes of great rewards that he might tell nothing but the truth. By the nature of his very position as a servant of Shivaji, as it is supposed, he was expected to reveal the truth. The safest way to decide this point, if it is worthwhile to do so, is to examine the sanad of Inamdars of Hivre and ascertain the fact, as Mr. Sané suggests.

I shall now conclude this note by exposing the fallacy contained in Mr. Karkaria's proposition which says that Pathans are naturally treacherous. I would ask Mr. Karkaria to prove the universality of this proposition in the face of contradictory evidence which is to be found in the very body of the bakhar. How, for instance, will he account for the loyal and untreacherous conduct of Ibrahim Khan Pathan, who was one of the famous Captains of Shivaji himself, or better still, how was it that Dilerkhan, a real Pathan, allowed Shivaji to escape unhurt when he was actually in his power! The scene of the interview between Shivaji and Dilerkhan resembles in many points that between him and Afzal, and is worth using. (*Vide*

page 35.) Mr. Karkaria then must either show that Ibrahim Khan and Dilerkhan were not Pathans, or acknowledge that it is not fair to say that all Pathans are naturally treacherous, and to deduce from it that Afzal Khan, being a Pathan, as it is alleged, was also naturally treacherous. M. J.

No. 11.

The "Times of India," Tuesday, March 10th, 1896.

SHIVAJI AND THE PRATAPGAD TRAGEDY.

TO THE EDITOR OF THE "TIMES OF INDIA."

SIR,—When a person undertakes to refute a writer's view, it is at least expected by that writer and by the public that these views should first be read and understood by that person. But your correspondent "M. J." does not seem to have done any thing of the kind. Though he has paid me the compliment of thinking it worth his while to devote two columns to me, he has very strangely not shown me the kindness of reading what I have written on the subject. Nay, he has been unkind enough to go and read something else and to attribute to me things I never said ! I have spoken and written, I think, enough on the subject. Two years ago I spoke before the Royal Asiatic Society of Bombay, and as late as January last, I gave an address on it to the Maharatta gentry at Satara. But my critic seems not to have heard me on any of these occasions. I have written about it in the *Calcutta Review* for July 1894, and also have published a pamphlet at Poona. But my critic has not read either. Will it be believed he does not show a single sign of having a knowledge of my real views as expressed in the above places ? He says : "Mr. Karkaria also *seems* to have based his arguments chiefly on the authority of his *bakhar*, as it appears from his remarks respecting Gopinath Pant." Now there is no *seeming* and no *appearing* in this matter. I have said in the most explicit terms what my basis is. I have taken the most important of these *bakhars* for a basis of my account. This is the *bakhar* of Shivaji by Krishnaji Anant Sabhasad, who was an official at the Court of the first Rajaram, and wrote a few years after Shivaji's death in about 1695. There are many other *bakhars* of Shivaji, especially that by Chitnis, written at the beginning of this century, which contains many important traditions and other matters not quite authenticated. But Sabhasad's account, as it is one of the earliest is also accepted as authentic and trustworthy, especially in the painstaking edition of Mr. Kashinath Narayen Sane. Now after this, how can any one be in doubt about my sources ? But let this pass.

There is a more serious matter than this; not only has he not read my writings but he has the astonishing boldness to quote as my words assertions which are not mine at all ! ! He says : "His (Mr. Karkaria's) principal contention is that Afzul Khan was a Pathan, and therefore like other Pathans, he was naturally treacherous. It was, therefore, but natural that he should have behaved treacherously towards Shivaji." Now this is not only not my "principal contention," but not my contention at all ! These two sentences that he purports to quote from me are not mine at all. I challenge him to point them out in any of my writings. I

have never said that Afzal was a Pathan, not that being a Pathan, he needs must have been treacherous! The main part of his so-called "refutation" of my theory rests on this supposed "principal contention" of mine. He seems to have raised a man of straw to have the pleasure of knocking him down. He triumphantly winds up with "Mr. Karkaria must acknowledge that it is not fair to say that all Pathans are naturally treacherous and to deduce from it that Afzal Khan, being a Pathan as it is alleged, was also naturally treacherous." Mr. Karkaria will do nothing of the kind. He knows too well to argue *a dicto sempliciter ad dictum secundum quid*, and thinks his critic owes him an apology for putting into his mouth such an absurd and patent fallacy as this, and hopes that it will be soon forthcoming.

A critic who shows such ignorance and resorts to such strange methods would not deserve further notice, but I am tempted to take this opportunity of saying something about my views on this subject. Your critic says that I hold "such *bakhars* to be more reliable than the history written by Mahomedan scholars like Khaji Khan." I don't say this. What I have said is: "The Mahratta version (*of this particular Pratapgad episode*) is just as trustworthy as the Mahomedan." I have never declared for the greater general reliability of Mahratta *bakhars* than that of Mahomedan histories. Though if I did do that, I would have the very great authority of Scott Waring for that, who had a very close knowledge of the materials for Mahratta history both indigenous and Mahomedan. "The Mooslims," he says, "view with animosity and anguish the progress the Mahrattas have made in the conquest of their fairest provinces, and which of late years must have been aggravated by the bondage of their King, the unfortunate representative of the house of Timoor. From such persons little that was favourable to the Mahratta character could be expected. The facts they give are garbled and perverted, whilst the slightest circumstance against them is seized upon and extended to an immeasurable length. . . . Not so the Mahratta histories. Excepting in the letter addressed to the Peishwa by the late Mulharao Holkar, no attempt is made to make the worst to appear the better reason. Victory and defeat are briefly related; if they pass over the latter too hastily they do not dwell upon the former with unnecessary minuteness. They do not endeavour to bias or mislead the judgment, but are certainly greatly deficient in chronology and in historical reflections." (Scott Waring, *History of Mahrattas*, 1810, p. viii.) The unreliableness of Mahomedan historians is notorious. You yourself have pointed that out in a recent leader quoting Sir Henry Elliot, than whom no better authority could be found to know their worth. But still in spite of this, I did not say for a moment that we should implicitly follow the Mahratta and reject the Mahomedan account of this Pratapgad affair. After giving the former by the side of the latter, I proceeded to judge of the probabilities of the case and to ask my hearers and readers to weigh these probabilities. I came to the conclusion that the Mahratta account has the greater probability on its side, and gave my reasons with your permission. I extract the following passage which contains some of my reasons :—

"The whole, like most disputed incidents of history, is a question of probability. And the Mahratta version of this incident shows to have a greater probability on its side than the other. Can it be believed that a great and skilful General like Afzal should be so simple and unwise as to trust himself to a person like Shivaji and have an unguarded interview, especially when only a short while before this, he had his eldest brother Sambhaji, the favourite son of his parents, treacherously murdered?

. . . Again, the Bijapur Court had treacherously taken his father Shahaji a prisoner through their agent Ghorpade; and Afzul must have known how deeply the son felt for this treachery to his father. *On the other hand Shivaji was known to Afzal and other Mahomedans as teacherous*, and in the beginning of this very campaign they believed him—though there is some doubt as to his guilt in this matter—to have caused the assassination of the Raja of Jaoli. The desecration of the temples of Bhawani and other gods of Tuljapur and elsewhere along the route of the Bijapur Army had greatly incensed such a staunch and enthusiastic Hindu as Shivaji was even then known to be, and Afzul could have easily guessed that he was an irreconcilable foe. It was such an enemy—a man whose father was treacherously imprisoned by his king and whose brother was deceitfully killed by himself, whose gods he had insulted, temples he had desecrated; it was such an enemy in whose arms the current account wants us to believe Afzul Khan trusted himself in friendly embrace.

"We would refuse to believe this even of an age which was guiltless of frequent treachery and about men who were pretty scrupulous in their means. But Shivaji's age was quite different, and his contemporaries free from scruples to an uncommon extent. What we call treachery was considered almost a lawful means of gaining one's ends, and at its worst was very lightly thought of. It was only the party that was worsted by it that complained. When both sides tacitly recognised it to be a legitimate mode of warfare, its heinousness must to some extent have disappeared. The Mahomedans employed it to the full as much as the Mahrattas. And the very Bijapur Court, implicated in the tragedy we are considering, furnishes many more examples of this than those given above. A short time before this event, Khan Mahomed, Adil Shah's Prime Minister, was inveigled and treacherously murdered at the city gate in open daylight, and people thought lightly of it. His son Khawas Khan, the Commander-in-Chief, met with a similar fate during the latter days of Shivaji's life, (when he was treacherously killed by Abdul Karim, the Prime Minister. Abdul Karim treated Dinanath Pant, who had instigated him to do this deed, in a similar way and killed him treacherously. Nor did the Deccani Mahomedans stand alone in this respect. The Northerners were just like them. What was it but gross treachery when Aurangzeb having inveigled Shivaji by false promises to his Court kept him a close prisoner? Aurangzeb gave similar instructions to Khan Jehan as regards Abdul Karim. Rao Karran of Bikanir was to be dealt with in a treacherous way by Diler Khan, according to instructions from Aurangzeb, but Bhow Sing gave him timely information and he escaped (Fereshtah's *Deccan*, by Scott, is the authority for all these facts). And the history of the last Mogals, the Childeries and Chilperies of Delhi, furnishes many instances of gross unscrupulousness and breach of faith.

"But it is rather hard upon men of that age with its own peculiar ideal and methods to judge them by our present high standard," &c.

I must apologise for this long extract. But it contains much that is of importance concerning my view of this Partapgad tragedy. From this it will appear how wide the mark is all that my critic says. He also gives a list of Shivaji's (what we would call) treacherous deeds, and quietly asks "How Mr. Karkaria will exculpate his *spotless hero* from the abovementioned charges."

Does he now see that that part of his so-called refutation really goes to strengthen my case? If Shivaji was so much more treacherous, as he asserts, does he see that there is so much less likelihood that a skilful and experienced general like Afzul Khan would have entrusted himself in his friendly embrace at an unguarded interview? And then who says that Shivaji is a spotless hero *credat* who will? Certainly *non ego.* I never said so. On the contrary, in the imperfect condensed report of my Satara address which appeared in your paper, I distinctly said that Shivaji was by no means an ideal hero; and that he was not *so black* so he was painted. This is then another instance of making me say what I have never said.

Again, when my critic takes the trouble to quote from the *Bakhar* to show that Afzul wanted to capture Shivaji alive, he also supports me, as I say the same thing. Surely there is very little difference in the treachery of taking a man captive alive by inveigling him and of killing him outright in the same way.

There are many other points on which I might write. But that may be done when my critic shows a better knowledge of my writings and of the subject, and when he employs a more straightforward method than he has done at present. But I cannot resist the temptation to point out his ludicrous mistake about the "*Kafir bar Jehanum raft*" of Khaji Khan, which he calls a witty epigram! It is neither the one nor the other. It is not an epigram certainly; and what wit is there in saying: "The infidel has gone to hell!" It is a chronogram, giving the date of Shivaji's death. And when such words are discovered for the purpose of recording the date, can any one believe "M. J." when he says that they are "not intended to show dislike of the author for him." What else do they show? Certainly not love for him! No, it is nothing else but a case of malicious ingenuity set to work by intense hatred. And this is not shown in this instance alone. Throughout his narrative, Khaji Khan uses approbrious epithets and abusive language towards Shivaji, and I will not defile your columns by quoting it.

One other point, and I have done. Shivaji's dream about Bhawani, he calls an "insidious dodge." I wish he had used more respectful language about such a matter. This appearance of the goddess Bhawani plays a large part in Shivaji's career, and any one who nowadays calls it all an "insidious dodge" shows a deep ignorance of physic and psychologic phenomena. It might have been an illusion, but that Shivaji was insincere and was all along telling a lie cannot be maintained. Apart from the consideration that an "insidious dodger" and a habitual liar, which this critic's hypothesis would make him out to be, could not have been the man to have moved a whole nation to deeds seldom surpassed in their annals. Does not history furnish many such instances of illusions sincerely believed by great men who were led to do great deeds by them? And are all such heroes to be set down as "insidious dodgers?" Was Alexander a "dodger" when he believed he was the son of Jupiter Ammon? Was Mahomed a "dodger" when he said he was the chosen prophet of God who revealed Himself to him in many a vision? Was the Emperor Constantine a "dodger" when he said he saw the sign of the cross with the legened *sub hoc signs vinces* in the heavens before his great victory? But why need I multiply instances. They will occur to every reader of history.

Yours, &c.,

R. P. KARKARIA.

Castle Hill,

Matheran, March 7.

No. 12.

The "Times of India," Tuesday, April 7, 1896.

SIVAJI AND THE PRATAPGAD TRAGEDY.

TO THE EDITOR OF THE "TIMES OF INDIA."

SIR,—Mr. Karkaria once more assures your readers that "he had used for a basis of his account the most important of the *Bakhars, viz.*, that written by Krishnaji Annant Sabhasad, as it has been accepted as an authentic and trustworthy authority," and yet by repeating that "Afzal had murdered Sivaji's eldest brother Sambhaji, only a short while before the Partapgad affair," and also by remarking again in connection with the murder of Raja of Javali that "there is some doubt about Sivaji's guilt in this matter," he clearly shows that if he has perused the *Bakhar* at all, he has done so quite perfunctorily. Or it may be that he believes in the efficacy of persistent repetition of fallacies. Misleading statements like the above could not but make me express my doubt, in my previous communication about his having ever consulted the *Bakhar* in the original Mahratti personally, by saying that "Mr. Karkaria *seems* (I may now say *pretends*) to have referred to the said *Bakhar*. Will Mr. Karkaria be pleased to quote the chapter and verse of his gospel which says that it was Afzul who had killed Sambhaji? The truth is that the only passage in the *Bakhar* which alludes to Sambhaji's death is that said to have been uttered by Sivaji in reply to his counsellors' advice to submit to Afzal. Sivaje said: "(They) will kill me as they killed Sambhaji" (page 11, line 7). Now this passage does not show in the least that it was Afzal who had killed Sambhaji, and yet Mr. Karkaria has the boldness to say so on the so-called authority of the *Bakhar*, in question. Even Mr. K. N. Sane, B.A., Principal of the Training College, Poona with his thorough knowledge of the language and contents of the *Bakhar* could not do more than remark, in explanation of this passage, that "the (writer of the) *Bakhar seems inclined to think* that Afzal or some one of his relations had killed Sambhaji treacherously." While the real account of the death of Sambhaji is that given by Grant Duff, J. Scott, and other historians of note. They all agree in sayng that "Sambhaji was killed in 1653 in an action against a refractory Zeminda of Bijapur. He was sent by his own father Shahaji to punish the said Zemindar." Again Mr. Karkaria states that "one of the instructions given to Sivaji by his mother on his final leave-taking was to remember that treacherous deed (murder of Sambhaji by Afzal), and, if possible, to avenge it." Now this statement also is altogether false and unwarranted by the *Bakhar*. The leave-taking affair is described therein in the following laconic way:—Sivaji placed his head on his mother's feet and took leave of her. The mother blessed him and said, "Shivba! (You) will be victorious." (Page 12.) It may be remarked here that this last sentence gives further significant proof of the pre-conceived plan of Sivaji and his men to kill Afzal. Similarly, the account of the treacherous murder of the Raja of Javali, as given by Krishnaji Anant in his *Bakhar*, is so lucid that it leaves not a shadow of doubt about Sivaji's having instigated it, and yet Mr. Karkaria says that "there is some doubt about his guilt in this matter!" Such is the nature of Mr. Karkaria's knowledge of he language and contents of "the authentic *Bakhar*," and with such knowledge he boasts of "having ascended higher in point of time than Duff and succeeded in showing that he (Duff) merely stereotyped the one-sided Mahomedan and the hearsay European contemporary accounts." I make myself bold to say that Mr. Karkaria's knowledge of Duff's work is of a par with his knowledge of the *Bakhar* in

question. Otherwise he would not have passed such improper remarks against Duff in the face of his (Duff's) statement in the most explicit terms in a footnote at the beginning of the third chapter of his history, to the effect that in writing the history of the Mahrattas he had recourse *principally* to Mahratta manuscripts, such as, for instance, *Krishnaji Anant Sabhasad's bakhar,* Mulhar Ramrao Chitnee's bakhar, a life of Sivaji, procured from the descendant of Chander Rao More, Raja of Javali, a life of Sivaji obtained from the Kulkarni of Kolhar near Bijapur, a history of the Mahrattas by the Deshpandya of Kathare Desh, and several others. But to return to the subject regarding the alleged iconoclasm of Afzal, Krishnaji Anant says:—(Afzal) broke the Maharaja's (Sivaji's) family goddess Bhavani, put (the pieces) into a handmill and ground (them) into powder. As soon as Bhavani was broken a heavenly voice was heard saying: "O Afzal! Wretch! On the twenty-first day from to-day I (shall) cut off your head, kill all your army, and satisfy (with the blood and flesh of the victims) nine *krors* of chamindas!" (page 10). Now in the very words of Mr. Karkaria, I may say here, *mutatis mutandis,* that "the strong bias of this varnished account is patent, and it is hard that it could have been accepted without any scrutiny by Mr. Krakaria." Krishnaji Anant's account of Afzal's alleged iconoclasm stands in strong contrast with that given by the author of "Siv Digvijaya" bakhar recently published at Baroda. This author says—and his version seems to bear an impress of truth on it—that prior to Afzal's arrival at Tuljapur Bhavani had appeared in a dream to the *badoes* or Brahman servants of the idol, and said that Afzal might insult her. The *badoes,* consequently, removed and concealed her, and under such circumstances, therefore, it was impossible that Afzal might have broken her.

It will be seen from the above that Afzal still remains guiltless on all the counts, despite Mr. Karkaria's attempt to implicate him into them on the supposed evidence of the bakhar. Similary his hero still stands pre-eminently charged with the treachery of having instigated the murder of the Raja of Javali. The delineation, therefore, of the character of Afzal as an open-hearted and untreacherous man and of Sivaji as a cunning and treacherous man, as given in my previous communication, remains the same. In support of my estimate of Sivaji's character I may now put before the readers a good etching of him taken by a *European* and *contemporary on the spot.* Neither Grant Duff nor Elphinstone seems to have been aware of it. The gentleman in question says:—"Sivaji is distrustful, secret, subtle, cruel, perfidious, insulting over whomsoever he gets into his power, absolute in his commands and in punishment more than severe, death or dismemberment being the punishment of every offence if necessity required, venturous, and desperate in execution of his resolves." [Escaliot to Sir Thomas Browne, author of "Religio Medici," 1664. Scene Surat, ætat 37.] I know, of course, that Mr. Karkaria will not give credence to this etching of his hero by a European and contemporary on the spot, as he holds all such writers unreliable, because, he says, "they dreaded and detested Sivaji." This is a good example of Mr. Karkari's so-called impartiality in weighing historical evidence. He rejects all the accounts of Sivaji's life and character given by the contemporary European writers, calling them hearsay and absurd, whereas he accepts readily all the really absurd and hearsay things written by Krishnaji Anant in connection with the Pratapgad affair, after a lapse of thirty-five years.

In connection with Mr. Karkaria's assertion that "the Bijapur Court had treacherously taken Sivaji's father, Shahaji, prisoner through their agent Ghorpade," it

may be observed that "the best and most authentic bakhar of Krishnaji Anant does not say at all that Shahaji was ever imprisoned by the Bijapur Court, much less treacherously. The bakhar is quite silent on this point. Its version about this affair runs thus:—The Bijapur Court on hearing of the serious nature of Sivaji's rebellion wanted to suppress it through Shahaji. The Queen-Regent wrote a letter to Shahaji, who was then in Bangalore, commanding him, under penalty of confiscation of his Jahagir, to check his son from following such a course of life. Shahaji wrote in reply that though Sivaji was his son, he ran away from him and was not then under his control. He further assured the queen that as for himself he was loyal to his king, and added that the king should punish his son or deal with him in any way he liked, and he (Shahaji) would raise no objection to it. The Bijapur Court on receiving such reply from Shahaji appointed Afzal to march against Sivaji and suppress his rebellion. Such is the account given by Krishnaji Anant in connection with Shahaji, and what we know, therefore, about his imprisonment is from Grant Duff. This great historian says that when the Bijapur Court heard of a rising in Shahaji's own Jahagir, headed by his own son Sivaji, Shahaji was asked to account for it. Shahaji failed to give a satisfactory explanation. The Bijapur Court then naturally suspected that Shahaji might have had his hand in it. Consequently, as Shahaji was a powerful Sardar, commanding a large army, in order to check further progress of the disturbance that Court sent, as a matter of policy, a private order to Baj Ghorpade, another Sardar who was serving then in the same part of the country with Shahaji, to seize and confine him. "This object," says Duff, "Ghorpade effected by treachery: he invited Shahaji to an entertainment and made prisoner." Now this is an instance of one Mahratta acting treacherously against another Maharatta. Sivaji knew this, and, consequently, when he avenged this wrong, he did so by killing the Ghorpade and several members of his family in fulfilment of an express injunction of his father Shahaji.

But when the treacherous character of Sivaji has thus been proved to the hilt, and Mr. Karkaria fails to exculpate his hero from the charge, he very skilfully adopts a different line of argument and says that "if Sivaji was so much more treacherous as I assert, there is so much less likelihood that a skilful and experienced general like Afzal should have entrusted himself in Sivaji's friendly embrace at an unguarded interview." Now though in emphasising the assertion, that "Sivaji was known to Afzal and the other Mahomedans as treacherous," Mr. Karkaria indirectly admits that his hero was really a treacherous man, yet he does not do so without greatly distorting the fact in a way to suit his purpose. For it must not be forgotten that a man cannot be known to be treacherous before some of his treacherous acts have become known to the public. However treacherous Sivaji might have been, he was certainly not known to be so either to Afzal or any other Mahomedan at Bijapur before the Pratapgad tragedy. The only news which the people at Bijapur had heard about Sivaji was that he had turned out a *pund* or free-booter. Such an event was not of uncommon occurrence in those days, and consequently it was less likely to attract any serious public attention. On the contrary, it was known to many in Bijapur and the Karnatak that though Sivaji became *pund*, he did not lose respect for his sovereign to such an extent as to dare even to kill his representative. Everyone knew, for instance, how Moulana Ahmed, the Adilshahi Governor of Kallian, was treated by Sivaji with the utmost respect, and honourably allowed to return to Bijapur, when

the Moulana had fallen a prisoner into the hands of Sivaji. It must also be remembered that Sivaji's principal object was always to gain money, and when that object was realised, he would generally do no one harm wantonly. "His desire of money is so great that he spares no barbarous cruelty to extort confessions from his prisoners, at least cuts off one hand, some times both. . . . . There were then about four heads and twenty-four hands cut off." (Escaliot to Browne.) All the acquisitions which Sivaji had made prior to 1657 were made without bloodshed. The correct and reliable account of the secret assassination of Mores of Javali which Sivaji's adherents had committed at his instigation, shortly before the Pratapgad tragedy, had not reached the Bijapur Court. And, lastly, the most important fact to be remembered is that prior to the Pratapgad tragedy Sivaji had never gone so far in his treachery as to kill any person himself treacherously. All these facts could not but have helped greatly to lulling instead of rousing the proud and open-hearted Afzal's suspicion, if any, respecting Sivaji's intended treachery. Moreover, the treachery of Sivaji generally assumed different shapes at different times, as Krishnaji Anant himself avers. For Sivaji had commenced his career as a petty robber; circumstances favoured him in his enterprises; every new success enlarged his ambition, as well as added to the stock of his previous experience, and enabled him to invent new plans to cope with new obstacles in the way to attain his ends. Really speaking, the Bijapur Court was not fully alive to the real magnitude of the danger which had threatened them from Sivaji's quarter, till their eyes were opened, though too late, by the sad end of Afzal and his army. Afzal always thought Sivaji an insignificant enemy. Sivaji had the cunningness enough to strengthen Afzal in this belief by affecting the utmost sorrow for his past conduct, pretending to have no thought of opposing so great a general, and by making a show of submission without giving a single battle. Moreover, a feeling of security which the consciousness of personal strength and courage, as well as of being the representative of a powerful Government commanding a large army, gives rise to, in the heart of a man, often deceives him so much as to make him think lightly of, and become less guarded in, his dealings with an apparently insignificant enemy, and thus make him fall an easy prey to his machinations and treachery. History does not furnish a few examples of this. How easily could Sivaji deceive a Mussulman general by his delusive proposals will further be best illustrated by the conduct of Seedee Jouhar, only a very short time even after the Pratapgad tragedy. This brave Bijapur general had actually hemmed in and entrapped Sivaji in the Panhala fort, but Sivaji effected his escape from the place by resorting to his old dodge of throwing his enemy off his guard by artful and false proposals of surrender and peace. It will be thus seen that it was in no way strange and impossible that a skilful and experienced general like Afzal should have entrusted himself in the friendly embrace of a wily enemy.

To sum up. Afzal had neither killed Sivaji's brother Sambhaji, nor insulted the Hindoo gods. He did neither know, nor was it possible for him to know, the treacherous character of his opponent, Sivaji. On the contrary, Afzal was an old friend of Shahaji, a fact which Sivaji had taken full advantage of by calling himself Afzal's nephew. He greatly under-estimated Sivaji's power of offence and defence on account of the show of ready submission which Sivaji had made as soon as Afzal appeared in the part of the country he was ravaging. And thus it was that the proud and unsuspecting Afzal naturally fell an easy prey to the novel and original plan of Sivaji. And hence it is that an enumeration of Sivaji's treacherous deeds,

made in my previous note, instead of holding up Mr. Karkaria's views, as he supposes, renders them less tenable. Mr. Karkaria next proceeds to say that "Sivaji's contemporaries were free from scruples to an uncommon extent. What we call treachery was considered almost a lawful means of gaining ends, and at its worst was very lightly thought of." He then gives a list of men whom he alleges, by way of proof, to have been the victims of treachery. But in doing so he garbles and perverts certain facts which were likely to show that what he called treachery was not necessarily to be so. I may explain this by giving a brief account of the so-called treacherous murder of some of the Bijapur nobles only. It is also necessary to give such an account here, as it will clearly show to the readers how Mr. Karkaria, in judging of Sivaji's conduct in connection with the Pratapgad tragedy, "insists on extenuating circumstances even at the risk of being called a casuist, and also on considering each case of historical wrong separately with its peculiar circumstances and not involving all indiscriminately in one universal anathema of condemnation," but in judging of the treacheries of the Deccani and Northern Mahomedans he does not follow, for reasons best known to him, the same rule. As for the history of the remaining persons mentioned in that list, the readers are requested to refer to the work of J. Scott. Shah Jehan had destroyed the kingdom of Ahmednagar about the year 1637. He next turned his attention to Bijapur. Prince Aurangzeb, the Moghul Subedar of the Deccan, advanced with a large army against Bijapur, and Khan Muhammad, the Prime Minister and Commander-in-Chief of the Bijapur Government, set out to oppose him. Aurangzeb corrupted Khan Mahammad, and he, therefore, shamefully neglected every opportunity by which he might have impeded the march of the Moghuls. Aurangzeb ultimately laid seige to the capital which at last had to capitulate. Such is the traitor Khan Muhammad! Grant Duff says of him: "Khan Muhammad, the Prime Minister, who had betrayed the cause of his king, was *justly condemned.*" But Khan Muhammad's punishment was confined to himself only. After his death his son Khavas Khan was raised to his position. At that time contentions prevailed amongst the Deccanies and Afghans of Bijapur. Dinanathpant, who was much in the confidence of Khavas Khan, artfully promoted the inveteracy of the parties in hopes that he should succeed whatever chief might be displaced. He advised Khavas Khan to seek assistance of the enemies of his master, the Moghuls, in expelling the Afghans from Bijapur. Khavas Khan acted accordingly. The miscreant Dinanath then communicated this news to Abdul Karim, the leader of the Afghan faction, insidiously observing that if the Habshee (Khavas Khan) should make the fort and kingdom an offering to the Moghuls it would put an end to Abdul Karim's and his own fortune. Abdul Karim thereupon, to save the Bijapur kingdom, took Khavas Khan prisoner and put him to death. Abdul Karim afterwards came to know of Dinanath's intrigues, and consequently he put him, too, to death, thus verifying, says J. Scott, the observation that "he who digs a pit for another often falls into it himself." It is true that treachery was the means employed to bring about the end of the traitors to their country and their lord, and Grant Duff also says that they ought to have been tried in any regular manner and then condemned. But when we remember that there is a vast difference between the merely titled nobility of the West and the really powerful nobility of the East, we shall clearly see that it was quite impossible to follow such a course in those days when every nobleman with a powerful army of men of his own tribe was himself to a great extent a saviour or destroyer of his king and kingdom. Any attempt, therefore, to cashier or condemn them in legal ways

was likely to end, if not in total annihilation, at least in serious calamity to the State. Yet this fact does not prove that a resort to treachery was in those days considered almost a lawful means of gaining an end. The history of the time furnishes many instances of persons, both Mahomedans and Mahrattas, who were far too noble and upright in their conduct to resort to treachery for gaining their objects. Anyone who carefully peruses the history of Mahrattas like Zunzarroe Ghatge, Mores, and Bandals, and of Mahomedans like Seedee Joukar, Prince Muazzin, and Dilerkhan (especially in connection with his treatment of Sivaji's eldest son Sambhaji), under critical circumstances, will come to the conclusion that Mr. Karkaria's sweeping remarks against the supposed low standard of morality of the age are far from being just. It must also be borne in mind that the history of the last Moghuls is not the history of the Moghuls of the time of Aurangzeb. Moreover, it is not proper and just either to judge of the conduct of a certain man principally from the bad conduct of his contemporaries, or to denounce a whole people from the bad conduct of a few individuals amongst them, and if Mr. Karkaria's contention on this point is to be received as sound, we shall hardly find any nation, in any age, to be free from unscrupulousness and breach of faith. In short, from this point of view also, what seems to be so highly improbable to Mr. Karkaria respecting Afzal's having entrusted himself in Sivaji's embrace is not in reality so improbable, but on the contrary every way probable.

I reserve my remarks on other points on Mr. Karkaria's letter for a future occasion.

M. J.

BOMBAY, *March* 31.

No. 13.

[*Translation of a Marathi article printed in column* 4 *at page* 3 *of the* "*Kesari*" *newspaper, dated the* 24*th March* 1896, *having at the foot of page* 4 *thereof a note as translated,* "*This newspaper was printed by Hari Narayan Gokhale at the Arya Bushana Press in Budhwar (Peth) at Poona and published by Bal Gangadhar Tilak.*"]

The six-monthly meeting of the Deccan College Indian History Cub will be held in the Deccan College at 4-30 p.m. next Saturday, the 28th of March. On this occasion Professor Bhanu will deliver a lecture on the subject of "The Death of Afzulkhan." All the members (of the Club) and all (other) gentlemen taking interest in the history of India are requested to be present at the said meeting.

A true translation.

(Sd.) ANAJI B. ANGAL,

for Chief Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, 9*th September* 1897.

No. 14.

[*Extracts from the Deccan College Quarterly* (*Anglo-Marathi*) *for the month of April* 1896, *Vol. IV., No.* 4, *at pp.* 7 *to* 16 *and pp.* 31 *and* 32.]

Pages 7—16.—The Story of the Death of Afzul Khan.

The successful rebellion of Shivajee against the Vijyapur Government, aggravated by its suddenness, excited even the imbecile and factious Mussalman Government of Vijyapur to think seriously of the matter and to make extraordinary efforts to put down the aspirant rebel. Afzul Khan, an officer of high rank, volunteered his services and solemnly promised that he would, in no time, bring the rebel to Vijyapur in chains or would annihilate him and his on the battle-field. A well-appointed army was placed at his disposal, and he set out on his expedition. On his way he destroyed the famous idol at Tuljapur, and violated the sanctity of the temple of Vithoba at Pundhurpur. At the Mahadev Hills he came to know that Shivajee had changed his seat of residence from Rajgad to Pratapghad, a well-built fort naturally defended by a dense forest and a hilly ground. The Mussalman Commander had to change therefore his plan of attack. He came to Wai and encamped there instead of proceeding to Poona according to his original plan. Afzul Khan was, some years before, the subhedar of this (Wai) district. Like a good commander he had then observed the inaccessible configuration of the ground and of the forts where Shivajee confined himself now. Afzul Khan at once saw the dangerous responsibility of maintaining a prolonged guerrilla warfare against the Mahrattas, who were known even then for their persevering patience in this kind of warfare. Afzul Khan could not afford to lose time, as the kingdom of his master was attacked by the Delhi Moghuls in the north and by the Karnatic Palegars in the south. There was also the additional difficulty of getting supplies for his army in this comparatively less fertile district.

He therefore naturally resolved to open negotiations of peace, which he thought he would be able to manage by his adroitness and by the high promises of promotion he would make to a comparatively petty rebel chief. With this confidence in his wisdom he sent his Vakeel Krishnajee Bhasker to Shivajee at Pratapghad.

Shivajee had, in the meanwhile, made every arrangement to fight out his cause of independence by means of a warfare, which would at once tire out the insolent impatience of the followers of Islam and would encourage his followers to look full in the face of their opponents. What kind of system this Mahratta warfare was, the veteran and best-equipped soldiers of Aurangzeb knew afterwards. In short, Shivajee intended to maintain his ground even in spite of the pusillanimous advice given by his councillors. Moropant Pingle and Nitajee Palkar, the leaders, respectively, of the infantry and the cavalry, were called upon to at once proceed to Pratapghad with their forces, and everything for the defence of the fort was got ready.

In the midst of these preparations, arrived the Vakeel of the Khan. He was honourably received by Shivajee. In a Durbar held on the very next day of his arrival, the Vakeel dwelt at length on the friendship existing between the Khan and Sahajee, the father of Shivajee, the desire of the Khan to promote the interests of Shivajee, the feeling of satisfaction entertained by the Emperor for the wonderful exploits of the son of Sahajee, the brave commander in the Karnatic, the awkward-

liness of Shivajee's rebellion, and stated in unmistakable terms that the prospeets of Shivajee would be bettered if he would at once accept the suzerainty of the Vijyapur Emperor. Shivajee, it must not be forgotten, had kept himself well informed of the plots and machinations of the Mussulman Commander, and was, therefore, well aware that all this was a feint to draw him out of the hilly district, and either to compel him to fight on the open plains or to lure him personally into the camp of the General and to imprison him on the spot. He, therefore, sought a private interview with the Vakeel, and appealing to his religious and national sentiments by powerful eloquence and the irresistible charms of money, Shivajee succeeded in eliciting the whole truth from the Vakeel. Being now officially or semi-officially informed of the dark plots of the Khan, he made up his mind to turn the tables against the Mussulmans by checkmating their plans at every point. He then consented to be present at an interview to take place at a site to be settled afterwards, to be friends with the Vijyapur Government, and to accompany Afzul Khan, if necessary, to the capital. Next he asked a person by name Dattojee Gopinath Bokil of Hivere to repair to Wai and to give the Khan distinctly to understand that he would not go down the hills unless every cause of misunderstanding is entirely removed at a personal interview to take place near Jawali at the foot of Pratapghad. Every alluring temptation inducing Shivajee to go to Wai having failed, Afzul Khan agreed to move from Wai, to take the main body of his forces to Jawali, and to fix his camp at Pargaon, where rich provisions were to be kept ready by the host of the place. It should be remembered that Afzul Khan agreed to every proposal made by Shivaji, because he had full confidence in his personal prowess, in the traditional prestige of his own government and the forces that were at his disposal. His plan was to beget confidence by an apparently confiding behaviour and to capture Shivajee at the place of the interview and to drag him away to Vijyapur in the midst of the confusion in the Mahratta camp that might ensue the seizure of the rebel chief. Battles in India, he knew, were lost or won by the fate of the leader, and he expected that the Mahratta rebels would scatter like chaff as soon as they would see their so-called chief led prisoner by the eminent representative of a constituted authority. It will be seen, however, that he miscalculated the force of love and admiration inspired by Shivajee amongst his followers.

Shivaji, on the other hand, pursued a policy of his own. He wished to capture or, if necessary, to kill Afzul Khan. His mother and the goddess Bhawanee, we are told, had blessed his project. He was prepared at this moment to sacrifice his own life for the cause of the Mahratta independence. The name of Afzul Khan was execrated by his fellow-brethren for the Khan's violent sacrileges at Tuljapur and Pundhurpur. His death, he was aware, brought about by means, fair or foul, would, instead of exciting any sympathy for the dead, call forth the applause of his own countrymen. The qualms of conscience were satisfied when he saw that he was only trying—with the surest hopes of success, of course—to avert a blow that was foully aimed at one who in himself represented the living type of the Mahratta love of independence. He, therefore, made the most skilful disposition of his army and so arranged his forces at the top and at the bottom of the fort that, at every point of attack, the Mahrattas or rather the *marlis* would outnumber the Mussalmans by more than half. The forces were secreted at different places and were ordered to move out at a signal settled between himself and the several leaders of his forces. Like Hannibal, the best general of all time, ancient or modern, Shivaji made Jaoli, the Trasymenus of the Moslems in the Dakhan.

The day of the appointment drew near. The time and the place were settled. The place selected was carefully examined by the confidential servants of Afzal. At the time appointed both the main actors set out to play their respective parts on the stage. Both of them repaired to the place with the most unfair motives agitating their hearts. Afzal Khan went there with confidence or rather with over-confidence Shivajee went to the place prepared to die or to win. They played for big stakes' Afzal Khan was a giant in strength and well supported by a long sword.

Shivajee, more discreet and more circumspect, took every care to provide himself with arms of offence and defence. The notorious *waghnaks* (tiger-claws made of iron) were on his left hand. According to the most authentic account, Afzal was the first to be on the scene. He was incensed to see the rich tent, the princely carpets, and the grand array of pearls and diamonds in the possession of a pigmy creature like Shivajee. His cupidity mixed with jealousy was aroused. He was beside himself. He was doubly angry, angry because Shivajee was not there to receive him and because Shivajee was too rich, and that, too, at the expense of his master. Reason and discretion were drowned; and immediately after the personal identity of Shivajee was ensured, he violently drew towards himself the person of Shivajee by a wrestling manœuvre, and under the pretext of embracing him pressed his neck in his left arm-pit, and lastly, unsheathing his sword, tried to flesh it in the body of Shivajee. Shivajee had anticipated something like this and had made his arrangements. His chain-armour protected him at the moment. With great, I might say, with divine presence of mind, he tore the entrails out of the stomach of Afzal by means of the iron *waghnaks* on his left hand, moving that hand all the way of his own back. The pain was intense. The Khan pushed him aside. Shivajee used his *bichwa* or short sword. Like a desperate gambler who had lost all along the line, Afzal cried, but at the same time made a thrust at the head of his opponent. The head of Shivajee was guarded by a helmet and then Shivajee, with a blow running diametrically from the left shoulder to the right side, cut the body of the monstrous Afzal into two and the huge corpse went to the ground with a crash.

I think it is out of place here to inquire how many persons were present at this interview. Suffice it to say that whatever the number, the other persons present took no part in the scuffle which must have lasted for not more than 5 minutes and which must have been fought out on a ground at some higher level or on a dais. Of all the Mahomedan eye-witnesses, none survived Afzal, and the Mahomedan version must therefore be imaginary and unreliable.

The story as narrated above is supported by the ballad of Agyandas and all the *Bakhars* excepting that of Pratapghad.

These *Bakhars*, &c., may be classified, as under :—

For the story.	*Against.*
Ballad by Agyandas.	1. Pratapghad *Bakhar*.
Bakhars.	2. Khafikhan.
1. Krishnaji Anant.	3. J. Scott's *Deccan*.
2. Chitnis' *Bakhar*.	
3. A short *Bakhar* of the Maratha Confederacy.	
4. Shiva Digvijaya.	
5. Shiva Pratab.	

This view is also mainly supported by Waring Scott who published his book in 1798, and indirectly by Bernier who says nothing of the craftiness of Shivajee.

To criticise the authorities :—

I. Mahomedan writers carry no value in regard to this point because

(*a*) The scuffle lasted but for 5 minutes at the utmost and no persons other than Shivajee and Afzal Khan were present on the dais; and also

(*b*) No Mussalman of respectability was allowed to escape.

(*c*) So the writings of Khafikhan (who apparently is at one with the Maratha writers as regards minor details) are valueless, because they are based on inferences surcharged with national bias and religious prejudices against the Marathas who were in his lifetime demolishing the edifice of the Mussalman Empire in India. Khafikhan wrote in the middle of the 18th century.

II. Maratha *Bakhars* are worthy of credit for—

(*a*) They make matter-of-fact statements.

(*b*) They do not hide the faults of their hero, *e. g.*, they tell us that Jawali Raja was treacherously murdered at the instigation of Shivajee. The same writers tell us that Shivajee formed the plan of killing Afzal Khan immediately after he knew that Afzal Khan was bent upon capturing him. They give every minute detail of the way in which he armed himself for aggression as well as for defence.

They do not paint the event in any more favourable light by making Afzal Khan strike the first blow. He was unpopular and his murder might have been loudly applauded. They might have, therefore, if the facts warranted, told us that Shivajee dealt the first blow. But there is not a whisper breathed against Shivajee in this particular instance. Personal or family bias they have, but they have nothing like the modern national bias. They state facts against their own national heroes with an undisturbed equanimity. And lastly all the *bakhars* but one agree in the main.

III. I think Grant Duff is not justified in making the following statements :—

(*A*) *Shivajee first sent his Vakeel to Afzalkhan.*
(*B*) *Shivajee lured Afzalkhan to repair to Jawali.*
(*C*) *Shivajee was treacherous and Afzalkhan was simple.*
(*D*) *Shivajee dealt the first blow.*

Let us examine these statements one by one—

(*A*) *Shivajee first sent his Vakeel to Afzalkhan.*

This is inaccurate. (1) Because Shivajee was safe on the mountain. The fort was well supplied with provisions and he was determined not to give the enemy any chance; but he was prepared to cut off the supplies of the enemy, to starve him out and, in short, to annihilate the army of the enemy without any loss to himself This he successfully did afterwards at (1) Panhalla and at (2) Chakan, which fort held out for nine months against the army of the Moguls led by Shahistekhan.

(2) Afzal wished to dispose of this business as soon as possible.
(*a*) He knew the inhospitable nature of the soil.
(*b*) He had no supply of provisions.
(*c*) All *bakhars* say so.

So Afzulkhan must have been compelled to open negotiations of peace *In the course of these negotiations for peace he intended to seize Shivajee.*

(B) *Shivajee lured Afzulkhan to repair to Jawali.*

This is also inaccurate. Shivajee only mentioned the place. He preferred that place to all others, because he could defend himself there by making his own arrangements, and he was afraid, and rightly too, of being dragged away to Vijyapur if he repaired to Wai.

Afzulkhan asked if his men could find food and water for themselves and if his animals could get fodder at Jawali. The question was satisfactorily answered. He had no other excuse to bring forward.

It is useful to remember that Afzul accepted with apparent cheerfulness every proposal of Shivajee. (1) He went to Jawali. (2) He went to the place appointed with the defined number of followers. (3) He went so far as to acquiesce in the proposal of Shivajee that he should be recognised as an independent ally (Chitnis' *bakhar*). All this cannot be explained by the over-simplicity of Afzul. There was a system in his simplicity. The ruling idea of his mind was that he would be able to take possession of Shivajee as soon as the latter would be brought in his presence. To say that Afzul wanted to make peace with Shivajee in order that the Government of Vijyapur might be strengthened, is to forget the future course of events, is to ignore the solemn pledge of Afzul in the Vijyapur Durbar, and is also to put out of mind the machinations of Afzul in the camp. Lastly all the *bakhars* agree in saying that Afzul went to the place of his own choice.

(*C*) *Shivajee was treacherous and Afzulkhan was simple.*

Afzulkhan cannot be said to have been a simpleton. He took every precaution against foul play. He went with a number of men well armed. He himself went there with his shield and sword. He carefully scrutinised the place of interview Shivajee might be said to be treacherous if treachery be defined as an act expressly undertaken to avert the blow of foul play on the other side. Shivajee in fact played his game with the weapons Afzul himself was using. I admit he did not allow himself to be caught in the snare. I admit his conduct to some extent led Afzul to believe that Shivajee suspected no treachery at the hands of Afzul. But I do not know if this could be called treachery. It is merely self-defence. Treachery you might call it, but you will have to remember that it was resorted to, to parry the blows aimed at him by his antagonist. Foul play there was on both the sides; but on the one side it was aggressive and on the other defensive. In short, Shivajee proved himself to be of the same mettle of which Clive, Wellington and others were made.

(*D*) *Shivajee dealt the first blow.*

This is false. He might have but he did not. Afzul was chaffed with fury. He did not know his own mind. He saw the person of Shivajee and was bent upon destroying the fell enemy there and then. Shivajee abided his time because he was well armed and because he was supported by his followers on all sides. His statement, as mentioned by the Chitnis' *bakhar*, "The Khan himself aggressive first! Well done, now is the time to show my strength," proves that he did abide his time.

All *bakhars* (except the Pratapgadh one) say that Afzal unsheathed his sword first There is no reason to disbelieve them since the writers of that period were strangers to modern sophistry that tries to interpret rather than state facts " You should not kill your enemy in cold blood," is a doctrine which their political morality did not accept and they therefore could not have hesitated to mention Shivajee's foul play exultingly if it had been a fact. In short Afzul must have played the part of an aggressor.

I think, therefore, that Afzulkhan opened the negotiations of peace ; he went to Jawali of his own accord ; and lastly that he dealt the first blow. I admit that Shivajee did not remain an indifferent or passive spectator. He used the very same weapons that Afzul was using against him.

Grant Duff is led away by his too much respect for the Mahomedan writers, who, in this case, at least, have no right to pronounce any verdict, as the facts supplied to them were not verified by them and as their violent prejudices against the Mahrattas have not allowed them to withdraw rational inferences.

Grant Duff is wrong in stating that Duttojee Gopinath was a servant of Afzul. He was in the service of Shivajee ; at any rate he was not pledged up to this time to any of the parties. No *inam* of Hivere was granted to him at this time, as I learn from a copy of the sanad given by a later king to one of the family of the Bokils.

PAGES 31 AND 32.—*Notes.*

* * * * * * * * * * * *

Professor C. G. Bhanu delivered a lecture in Marathi expressing his view of the Pratapgadh tragedy at a meeting of the Deccan College, Indian History Club, held at the College, on the 28th of March 1896, Professor Bain presiding. We print elsewhere a brief summary of the lecture in English under the title of "The Story of the Death of Afzulkhan." We leave it to our readers to judge how far Professor Bhanu succeeded in establishing his contention—we are perfectly convinced that he has got at the truth. However, it would be useful for those who take an interest in Indian History and in History in general to bear in mind the remarks passed by Professor Bain on the occasion. He said he saw no necessity of the discussions raised over the question. Public men like Shivajee are not to be tried by the standard of private morality. The grand duty of establishing the Maratha independence devolved upon Shivajee, and almost anything he did for it was excusable in him. He did it for his nation.

No. 15.

The "Times of India," Friday, March 5, 1897.

STRAY LEAVES FROM MY NOTE BOOK.—No. XXXVI.

"VERIFYING" WITH SIR RICHARD TEMPLE.

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I had the great good fortune to have taken part in several tours of verification with Sir Richard Temple, but will only select two of them for this paper.

Soon after Sir Richard arrived in Bombay he projected a small tour of "verification" at Shivaji's great fortress, Raighar. I was at Rutnagherry, and the Collector of Kolaba was a new man, so I received orders to join the Government House party at Dasgaum, on the Savitri, about eleven or twelve miles from the eastern point of ascent of the mountain, and about five miles from Mhad of evil repute. Of course Sir Richard (who had sent on horses) insisted on first verifying the little stone landing-place and the two dharamsalas constructed by poor Grey—whose lamentable history I related a few weeks ago. Then after a good square meal Sir Richard made a sketch of the pretty little tank of the Travellers' Bungalow, while the staff and I saw to the arrangements for the ascent (on horse back), and, what was of more importance still, the descent on the following morning, and a cross-country ride from Raighar to Mhaisla in Habsan, at the head of the Rajpuri river which runs down to Janjira. Light tents had been sent up to the summit of Raighar already. The staff included (I am nearly certain) Dr. Waters and Captain Dean Pitt.

At last about two or three in the afternoon of about as hot a day as you would wish to find we rode off. The intervening ride to the foot of the fortress was hot, but pleasant enough. Then came the ascent which, please to remember, is on the eastern face, and is tolerably bare of scrub, seeing that it is basalt—the last part of the ascent being bare rock, where we had to dismount and drag our nags up.

I wonder if that miraculous outburst of partriotism among the Brahmins the year before last in favor of Shivaji's memory yielded enough to put the road in a passable state, so that these patriots may the easier ascend with their votive offerings? I wonder whether the red-hot resenters of British Gothism have ever taken the trouble to recover from Mhad the corner and carved stones, the pillars and woodwork, which are to be seen built into the houses of the better classes, or into their cow-sheds.

However, I will resume my narrative. The toil of the ascent was at once forgotten by the marvellous beauty of the scenery when once we had gained the plateau of the summit. *Pertabghur* in its majesty, *Torna* in its audacious lofty isolation, all the peaks bristling around "*Arthur's Seat*," the *Saddleback*, looking within a stone's throw, *Mhyputghar*, in placid slumber, were all visible, watcheds by the last rays of the setting sun, while the tiny stream of the Savitri and it numerous petty tributaries glistened like silver as they wound about below us. It is, indeed, a fair scene which needs a more worthy pen than mine to depict.

A mangy, ill-clad, ill-favoured old *Poojari*—whether a Maratha or a Brahmin I forget—conducted us to what people call the tomb of Shivaji It has often been described of late, and I need not waste my ink over a lump of decaying stones and mortar. We then proceeded to the "Chowthara" or plinth, still in fair order, of the great Durbar hall in which it was Shivaji's wont to receive each year his various leaders, to distribute the spoil they had collected since last Dussera. The plinth faces west, if I remember aright. Sir Richard mounted it, and we all stood around him, while he made a heart-stirring recitation. I see the scene now vividly before my eyes. I seem to hear his very words. He first described the wild Mawalis and Hedkaris, all armed to the teeth, with shield, spear, and dagger, gathered round the foot of the "Chowthara"—bales of spoil scattered about, gold and silver, jewels, rich clothing, and cash galore; the great warrior Chiefs gathered in a semi-circle

around the Founder of the Maratha Empire, who, gorgeously arrayed, his good sword "Bhowani" lying ready to his hand, sat on the Kincob cushions of the throne, awarding praise or blame as seemed meet. A shortish wiry man with looks of unusual intelligence his visage generally displaying frankrough humour—his long ape-like arms—which Grant-Duff tells us are thought a great beauty among the Maratha race—(I never heard of this myself, *par parenthese*!) folded on his knees or held up in gesticulation. The whole scene mayhap was lit by the rays of the rising sun, dispelling the masses of fleecy clouds in the valleys beneath, or, more likely still, a nocturnal Durbar lit up by waving torches, the back distance all in gloom, the light glinting off the polished shields and glittering spoil,—fierce faces appearing and disappearing, the tocsin resounding with enthusiastic cries "Jey! Shivaji! Jey!" Behind an embroidered *purdah* stretched across the back of the chamber, from which ever and anon peeped faces of the wives and female members of the family, exultant in the tumult. In the rear, fittest place for them, appeared a few white-clad Brahmins, like snakes in the grass—subservient, humble, treacherous, as is their wont.

"Anon," declaimed Sir Richard, "the scene changes. The great Shivaji is dead and burnt on this plateau. It is the craven Sambhaji, his son who for the first time ascends his father's fortress, his mind filled with blood-thirsty intent, a discontented soldiery following him presaging evil, with scant spoil to divide, the very crows and vultures seeming to scent blood in the air. The last surviving queen-mother has been deserted by all but Annaji Dutto, and a few faithful adherents, the white-livered Brahmins have long fled, and are endeavouring to make terms for themselves with the nearest party in power by the sale of secrets, by treachery of every kind. The queen-mother is well nigh alone when she is summoned to the ghastly Durbar. Knowing that she has no chance of mercy in her widow's weed, she ascends the "Chowthara," and then with all the strength given to her at the supreme moment, she holds forth, the craven Sambhaji, meanwhile, cowering on the throne his father had so recently occupied. 'Unworthy son of the great Shivaji,' she says, raising her shrivelled arm, 'if son thou art, which many here doubt, I defy thee, do thy worst—thou comest hither, I know, for my blood and that of thy father's faithful servants, and thou art now about to shed it. We die, but' (raising both arms with clenched fists to heaven) 'may the wrath of the great *Ishwar*, may the curse of *Bhowani* descend upon thee and thine.' No cries of 'Jey Sambhaji then,' but a deadly gloom over the whole assemblage—a silence only broken by the guttural curses of the Mawalis. The queen-mother, her face now veiled, and afterwards Annaji Dutto, are lead away to execution, and the murderer seeks to drown his conscience and allay his fears by revelry and riot!"

I do not think that ever in my life I have been so impressed as by this declamation by Sir Richard. It was simply magnificent, and he never faltered for a word.

I commend these two pictures to the gifted globe-trotting artists who frequent your shores, but to my own mind only Gustave Doré could have done them justice.

Well, Captain Dean Pitt and I went down to sleep at the village at the foot of the mountain, while Dr. Waters stayed behind with His Excellency. Pitt and I had to trace and mark the route for the morning, with Mhars set at intervals holding up long bamboos tufted with grass. We had to do this almost at a foot's pace, as we

moreover had the precious tiffin basket to carry and leave half way. Sir Richard must have started much later in the day with Waters, for he was bent on sketching. I know also that he gave various stringent orders about the care of the buildings and I have no doubt the Collector received in due time a pungent "minute" on the subject.

The rest of the ride to Mhaisla was simple enough. Pitt and I rode at a foot's pace throughout the sweltering day, with one break for tiffin from the basket. Sir Richard and Waters rode nearly full speed, for our signal men remained staunch at their posts like the good fellows they always are. Thus Pitt and I had scarcely revelled in our well-earned "tubs," when His Excellency burst into camp, and on my asking if he were not tired (the distance was over 13 miles), he exclaimed: "Tired? Not a bit! never enjoyed any trip so much?" We dined where we were, and then after sundown got into some boats provided by the Nawab of Jinjira, and went down on the tide to the May Frere. His Excellency did not land. There was a bit of a sea on, and as was his wont, Sir Richard, ensconced in a deck chair, fought with sea-sickness as he did with any other obstacle, but was fain to admit when I ventured to ask him how he felt "Very *piano*! Crawford, very *piano*."

I may be pardoned here for a short digression which occurs to me in connection with Mr. R. P. Karkaria's pamphlet on the Pratapgarh (or as I spell it Pertabghur) Fort, where he attempts, with complete success, to refute the general ideas erroneously held by many persons concerning the so-called murder of Afzul Khan, the Mogul leader at that spot. Mr. R. P. Karkaria may be consoled. Writers who, like Grant-Duff, Fryer, and others, merely copy their accounts of the tragedy from each other, must not be regarded as authorities by any student of Maratha History. Mr. Karkaria has gone to the very best source for information, the old *Bakhars* and documents still happily extant; and he has produced a really reliable and authentic account. There can be no doubt that Afzul Khan came prepared not only to encounter treachery, but to employ it himself when opportunity offered. Neither must Mr. Karkaria believe that the hitherto popular version of the tragedy has obtained general credence even among Europeans. To me it has always read like a chapter in one of Cooper's Red Indian stories; and I fancied I was reading an account of an encounter between the Crow Chief "Clawing Catamount" (Shivaji) and the equally celebrated Iroquois leader "Hissing Serpent" (Afzul Khan). I have always admired Shivaji's pluck, cunning and superior military skill, and have despised the conquered Afzul, who would infallibly have "murdered" (!) Shivaji at that meeting if Shivaji had not killed him! The mode of warfare, the morals of those centuries gone by, are not to be judged by Exeter Hall standards of the present day. We are dealing with times when armed men struggled hourly for their lives and *shuffled not*! No! no! Let us still cry "Jey, Shivaji Maharaj, Jey."

A. T. C.

No. 16.

The "Times of India," July 8, 1897.

A SPEECH AT THE SHIVAJI MEETING.

TO THE EDITOR OF "THE TIMES OF INDIA."

SIR,—My discourse on the 13th of June, 1897, was in the main a repetition of what I had said before a meeting of "The History Club" held in the Deccan

College under the presidency of Professor Bain. On this present occasion I dwelt at large on three more points, which are as follows:—

I began with an expression of my unwillingness to address a meeting or take any part in the Shivaji festivities, firstly because of the dire visitations of the Plague and Famine, and, secondly, because of the fact that I did not like to speak before an audience gathered at the instance of persons with whom I agreed in no point except in admiring the character of the great Shivaji, informing them, moreover, that I was pressed with so much persistency that I feared my refusal would be imputed to a desire on my part to arrogate an undue importance to myself, an idea never present to my mind. I then narrated the story of the death of Afzul Khan and proceeded to amplify the hint that was thrown out by Professor Bain in his presidential remarks, by saying that supposing Shivaji to have been on the aggressive (an absurd supposition, in my opinion) students of history cannot impeach him for violating rules of ordinary morality. His conduct can be defended on ultramoral grounds. My thesis was as follows:—"When a system of Government becomes weak and antiquated, when centrifugal forces predominate over the centripetal, then an inspired personage like Shivaji may, on extraordinary occasions, take recourse to means that the ordinary moral code cannot justify. But three conditions are necessary: (*a*) He must on no account be selfish and must not work for self aggrandisement; (*b*) success must invariably follow his steps; and (*c*) he must have a divine inspiration. If these conditions are satisfied, then we, ordinary men, cannot and have no right to criticize the conduct of such a hero, because his case is not covered by the current rules of morality. Ordinary men do and must condemn such actions, but History, which comes to be written after a century or so, and, therefore, is written generally without bias or prejudice, does justify this violation of moral rules, satisfying itself that the above-mentioned conditions are fulfilled."

I concluded this point by saying: "It is not for us, selfish men and irreligious as we are, and have shown ourselves to be recently, to drag down persons like Clive, Hastings, Washington, and Shivaji—though all do not stand on the same pedestal and though there may be a difference *inter alia* in the degrees of their greatness—to the level of ordinary men and then to criticize them. Nor is it desirable that we, men of the socially and morally degraded days, shou'd ever dream of attempting to do anything like Shivaji. In short, this is a question of history and not of politics. Lastly, I implored the audience as well as the public in general by requesting them to sink our differences, petty and in most cases personal as they are, and take in hand some useful work that we can efficiently do. The work of raising the intellectual and moral status of our continental country is hard, heavy and tedious, requiring the hearty co-operation of all parties from all sides. For we suffer not from one malady alone but from several. Let us, therefore, allow every one to work in his own way, only taking care to see that his work and his motives are honest and not calculated to injure directly or indirectly the immediate as well as the prospective interest of our country. Advancement in matters religious, social, and industrial must precede, or at any rate go hand in hand with, political progress. The work of regenerating a fallen—and every way fallen—nation is long and tedious. It will require a number of generations, nay a number of centuries. Let us, therefore, begin to work with patience. Remember, Shivaji was the last term of a series of great men, silently and quietly working from the twelfth century, for the religious emancipation of the Mahrattas, with a view to facilitate their material advancement. It is

therefore, desirable on an occasion like this to learn the lesson "bear and forbear" that all of us may be able to carry out in our own humble way the work of regeneration. This was practically the burden of my address.—Yours, &c.,

C. S. BHANU.

Poona, July 5.

The "Times of India," Wednesday, June 30, 1897.

SEDITION OR PREJUDICE—WHICH?

To THE EDITOR OF THE "TIMES OF INDIA."

SIR,—Your continued malicious remarks about me and the journals published by me compel me to write this letter. I do not expect any praise from you, but I once believed the *Times,* under its present editorship, would at least be fair; but your recent articles have more than disappointed me in the matter. The shocking tragedy at Poona which we all deplore may have obscured your judgment. But I have little to do with your motives. What I want to show is that you have entirely misrepresented my position both as a journalist and a private gentleman during the time the plague operations were in force in Poona. I should have attributed this to your ignorance of the language in which the *Kesari* is published, as well as of what was going on in the city at the time, had I not perceived a deliberate intention in your writing, as well as those of "Shackles" and "Justice," to pervert and misrepresent obvious facts at a time when they think they can do greatest mischief by such misrepresentations. Now let me first of all disabuse you of the idea that either the *Mahratta* or the *Kesari* wrote anything during the plague so as to incite the people to break the peace or to have recourse to force. The attitude taken up by these papers was briefly this:—(1) That *stringent* measures for the suppression of plague were *necessary,* and that Government, acting on best advice available, were accordingly determined to carry them out. (2) That opposition to the measures was undesirable, and that the only course advisable was to accept the principles and to represent to Government if any unnecessary harshness was caused in its execution. (3) That the leaders of the people, so far as lay in their power, should try to assist Government by establishing private plague hospitals, segregation camps, and committees for each peth (ward) or lane, to take charge of the property of the segregated person or to go with the searching parties. Take any issue of the *Kesari,* and you will find therein appeals to the leading gentlemen in the city to stand by their posts and assist the Government by doing everything in their power to render the plague measures acceptable to the people. Your correspondent "Shackles" speaks of "vigilance committees"; but I must tell you—and you can find it if you choose—that this is a mistranslation. All that I have urged is the formation of committees for each lane or peth, to look after the property of the segregated persons, and even this was to be done with the knowledge and consent of Mr. Rand, the Chairman of the Plague Committee. The phrase "futility of mere clamour" is again misrepresented by you. Any one who reads the passage in the original will see its meaning clearly. What is meant and said is, that it was no use complaining against the plague measures from outside the town, but that we must form committees and work to help the people. "Do not complain but work" was the advice given, and if this is sedition, then the Anglo-Indian vocabulary must be

more comprehensive than the common English. Perhaps your present feelings may prompt you to say that all this was on paper, and that my conduct might have been inconsistent with my words. This is rather a delicate matter to handle, as is involves a question regarding personal acts. But howsoever reluctantly, I think I must, at the risk of being called egoistic, say something as to what I did at the time. I was not satisfied simply with taunting or advising the leaders to organise peth committees. I myself went (with other friends whose work I may once for all here state I do not wish to under-rate in any way by stating what I did personally) into a number of peths and tried to establish such committees, but found that it was not possible to do so, as most of the leading men had gone out of the town. As regards the Hindu Plague Hospital, I think I can claim a considerable share of the credit of starting and maintaining it in good order. I used to visit it twice a day, going into the different wards and making inquiries about the patients. Then as regards the segregation camp, it was soon found that the persons taken there were greatly inconvenienced by being required to cook their own food, and that though the Plague Committee paid two annas per head per day to the poor, it was not sufficient to purchase a day's provision. Here again I, along with other friends, had to work hard to establish a kitchen, where two regular meals were given for two annas to any one in the segregation camp. The loss, which came to about one and a half anna per head per day, was met from subscriptions raised for that purpose. In short, I tried to do all that was possible for me to make the plague measures acceptable to the people, and everything that was done was done with the knowledge and consent of the Chairman of the Plague Committee. It was only after the plague had well nigh disappeared that I went away to Sinhgarh to take a short rest. Any one in Poona can bear witness to these facts.

Such being my work, I think I am entitled to say that you are doing me sheer injustice by representing that either myself or my paper did anything to excite feelings of disaffection amongst the people. It was my firm conviction that stringent sanitary measures would do considerable good, if they would not stamp out the plague altogether; and I have not only expressed this conviction in the paper, but have done as much as a single citizen of my position could do to practically show how people should help themselves and not blame the Plague Committee for everything. But unlike yourselves I could not shut up my eyes to complaints and grievances, which from personal knowledge I was convinced were real and well founded. I, along with other friends, was the first to bring them to the notice of the Plague Committee, but I regret to say that the Committee, ftom whatever cause, never took any serious notice of them. I know of a number of cases where persons were wrongly sent to the segregation camp or plague hospital, or their property was wantonly destroyed; and if the papers which I publish, along with others, loudly complained about these grievances, it was because the Plague Committee could not, or would not, redress them. You and your correspondents, I know, hold the opinion that the complaints were unfounded. But my personal experience is otherwise, and I still hold that the Plague Committee could have executed their task equally well in a far more conciliatory manner. If we could make the segregation camp a little more comfortable by having a kitchen therein, the Plague Committee could have certainly done better. This is not, however, the place to go into these details. All that I wish to urge is that it is a sheer mistake to believe that the native papers have excited the feeling of dissatisfaction during the time of the plague.

The Press accepted the principle, but complained about the unnecessary harshness in its execution. You are probably aware that the Bombay Government itself anticipated dissatisfaction, scavengers' strikes or riots if plague measures were stringently carried out (*vide* Plague Blue Book), and it so telegraphed to the Secretary of State. If you blame the Native Press now you must equally blame the Government of Bombay for openly recording their fears in a telegram which is now as much known to the public as anything said in the Native Press. Anglo-Indian journalists like yourselves can, I know, be hardly induced to take the right view of the question. But still I must state what I honestly believe to be the case, *viz.*, that the unnecessary stringency of the plague measures, and not the writings of the Native Press, are responsible for the feelings of dissatisfaction referred to by you. His Excellency Lord Sandhurst was indeed anxious to see that the plague measures were carried on with the least possible annoyance to the people. But His Excellency's wishes were little attended to by the lower executive authorities, and Government, I am sorry to say, did not exercise sufficient control over them.

Here, I think, I must stop. You have, it seems, chosen to follow in the footsteps of the *London Times* in making reckless charges at such a time against individuals, communities, or institutions. In my opinion it is neither fair nor conducive to the ends of justice to take up such a line at the present time. I may, however, in conclusion, say that it is extremely foolish to ignore all the work done by individuals and the good sense and the patience of a community as a whole, simply because a fanatic took it into his head to perpetrate a horrible deed, which, as I have said above, all of us equally deplore. Further discussion must, I think, be reserved for cooler times, when we shall be ready to look at men and things with unjaundiced eyes.—I am, &c.,

B. G. TILAK.

POONA, *June* 28.

No. 18.

GOVERNMENT OF BOMBAY.

9th March 1897.

DEAR MR. TILAK,

His Excellency has read your Memorandum on the Plague Operations in Poona with much interest and has directed me to send it to Mr. Rand.

Yours very truly,

(Sd) J. J. HEATON.

Hon'ble Mr. Tilak.

No. 19.

Mahratta OF 4TH APRIL 1897.

SIR,—We beg to send to you the following suggestions regarding the Plague Operations as at present carried on in Poona, and hope that they will receive the consideration they deserve at the hands of the Plague Committee. Several of us have gone with the house-to-house searching parties, and have also other opportunities of knowing how and where the present operations work harshly on the people. If these hardships are removed, we feel sure that the operations of the Committee would be carried on more smoothly and successfully than at present.

2. The object of the present arrangement is threefold—(1) to find out persons suffering from plague and send them to a hospital; (2) segregate the persons who may have come in close contact with him; and (3) to thoroughly disinfect the room or the house where a case has occurred and to destroy things that cannot be disinfected.

3. The house-to-house search is undertaken for the first purpose. The work is done by British soldiers, who search every day one of the blocks into which the city is divided. Native gentlemen are requested to accompany them, but as these gentlemen have neither power to check excesses nor any recognised status in the searching parties many of them feel that their presence is not of much practical use, now that the people know what house-to-house search means. There have been again complaints regarding the disappearance of cash or other property in the houses opened in the owner's absence, and small boxes have been broken open in some cases. Cases have also occurred where soldiers have gone into Hindu temples or places of worship in spite of the remonstrances of the Hindu gentlemen accompanying the party. It also happens sometimes that persons not suffering from plague are unnecessarily taken to the Plague Hospital. We need not point out that one such case—and the news travels fast in such cases—materially adds to the uneasiness of the people, and that it is better not to interfere in such solitary and at best suspected cases than to remove them to the hospital and therby aggravating the panic. We think that all these irregularities and annoyances may be put a stop to by—

(*a*) forming Volunteers' Committees for each lane or block and authorising them to report any excesses committed during the search of the blocks assigned to them;

(*b*) publishing the rules according to which house-to-house search is carried on;

(*c*) providing that in cases where the owners are absent from Poona the house may properly be locked up and sealed by the Committee, so as to render its second search unnecessary;

(*d*) ordering all the Hindu public places of worship in a block will only be searched by Hindu gentlemen accompanying the search parties, and Mohamedan places by Mohamedans;

(*e*) directing that where the owner of a house is ready to take the search party over the whole house, several parties should not simultaneously enter the same house to the confusion of the owner; and

(*f*) taking care to see that suspected cases are removed to the hospital only after full inquiry by the medical advisers of the Committee.

4. As regards the second object, *viz.*, segregation of the healthy, we are glad, to state that some of the inconveniences are removed by the rules recently published but still much requires to be done to make the arrangements comfortable to the people. For instance, little time is allowed to the people to make arrangements for the safe custody of their household goods or cattle and for taking with them things that they may require in the Segregation Camp. To remove this and other inconveniences, we beg to suggest:—

(*a*) That before segregating any healthy person sufficient notice should be given to him to make arrangements for removal;

(*b*) That if necessary the Committee should receive for safe custody sealed boxes containing valuable property;

(*c*) That in large houses or where the property is very great or there is cattle to be looked after, a man should be allowed to stay in the house to take care of the property or the cattle;

(*d*) That better arrangements regarding latrines, water-supply and provision-shops should be made at the Segregation Camp;

(*e*) That Voluntary Committees of private gentlemen should be allowed to make arrangements to help the persons segregated,—of course, under the supervision of the Plague Committee or any officer appointed by it;

(*f*) That the allowance of annas two should be increased to annas three per day;

(*g*) That greater care should be taken to segregate only those who may have come in close contact with the sick or who may have been long in the same room with him. Exceptions may be made in the cases of pregnant women and decrepit person or persons who are ill from other causes, these being segregated, if necessary, in their own houses.

5. Regarding the disinfecting of the houses and property, you have already ordered that nothing except the bedding and clothing of the sick is to be destroyed except under medical direction. For the better carrying out of these orders and the removal of other grievances in this respect, we suggest:—

(*a*) That the officers, who destroy or burn any articles, should be asked to report the articles destroyed or burnt;

(*b*) That in cases where the owner is absent, the Committee should remove the property to the warehouse before keeping the house open for disinfecting purposes;

(*c*) That, as stated above, a man on behalf of the owner should be allowed to be present when the whole property is not removed or where only a room in a house is to be disinfected;

(*d*) that greater care should be taken to verify the numbers of the houses to be disinfected so as to avoid giving unnecessary annoyance to other house-owners.

6. These suggestions are made in a spirit of co-operation. You may have noticed that there is no opposition to house-to-house search from the people. They

only wish that it should be carried on, as His Excellency was pleased to observe, with the least annoyance to them or interference with their customs; and we believe that, if the above suggestions are adopted, the object can be attained not only without impairing the efficacy of the present operations, but actually increasing it by securing the willing co-operation and support of the people.—We beg, &c.

(Sd.) B. R. VAIDYA.
" G. K. GARDE.
" V. N. PHATAK.
" B. P. JOSHI.
" B. G. TILAK.

No. 20.

[*Translation of what appears under the heading 'Editorial' notes printed in column one at page 3 of the "Kesari" newspaper, dated this 9th February 1897, having at the foot of page 4 thereof a note as translated—"This newspaper was printed, by Hari Narayan Gokhale at the Arya Bushan Press in Budhwar (Peth) at Poona, and published by Bal Gangadhar Tilak."*

We have received some letters *re* the suspension of land revenue, from which it appears that Government officials are bringing considerable pressure to bear on the ryots in Khandesh, Kolaba, and other districts. We have already said that the order of the Collector of Poona, insisting on the full payment of the revenue by sowcars, zemindars, mortgagees, &c., who get their lands cultivated by tenants is inconsistent with the provisions of the Famine Code, and the local Sarvajanik Sabha has in this connection addressed a lengthy and argumentative memorial to Government. If the Government of the Central Provinces and of the N.-W. P. have applied to the Malguzars and Talukdars in those provinces respectively, the principle that if the sowcar is ready to grant remission or suspension to his tenant, he is entitled to similar remission or suspension from Government, we see no reason why the same should not be made applicable to the sowcars in the Bombay Presidency. The report of the Famine Commission, the Famine Code, and the practice in the C. P., the N.-W. P. and the Punjab are in this respect in the sowcar's favour. If after all this the Bombay Government realises the full revenue from the sowcars, its conduct will have to be characterised as arbitrary and oppressive. A local contemporary has on this subject raised a queer objection and has given it as his opinion that Government should grant no remissions to the sowcar, in support of which our contemporary quotes an extract from a speech of the Chief Commissioner of Nagpur. But the same speech, from which the said extract has been culled, goes on a little further after two or three sentences as follows, when addressing the Malguzars, "Suspension of revenue has been granted to you only in order that you may grant similar concession to your tenants. If the Government takes from you half the amount of land revenue, you are to take only one-half of the stipulated share (of the yield)." From this it is clear what the state of affairs in Nagpur is, and what the opinion of the Commissioner there is. But who (can see this clearly)? Only he who knows anything about the subject or has eyes to see for himself. When in the absence of any information (on the subject)

or of an attempt to acquire it, one writes on such a subject, supposing it to be something like a (social) reform topic on which one may expatiate freely, or to serve some other purpose, the writing must necessarily be, as in the present instance, groundless and erroneous. Better far is it not to write on such a subject. Well, we have no desire to speak at further length of such writers. The request made by the Sarvajanik Sabha are reasonable and well supported, and if Government will not grant them a brush of orpiment will have to be passed over the report of the Famine Commission appointed by Government itself. Not that the members of the Famine Commission were regardless of the interests of Government, and we do not think it good for us to be officious enough to advise Government that the suggestions of the Commissioners are disadvantageous to it. It rests with the pleasure of Government to do a thing or not to do it, and we are to ask something or not according as the claim is valid or otherwise. It is sufficient for our purpose if our demand is reasonable and well supported and any one will see from the memorial of the Sarvajanik Sabha that the present application is so (reasonable and well supported). Only, the sowcars must patiently set forth their claims before Government. Wherever notices have been served upon them they must send their petitions to the Collectors, and through them to the Government, and we believe that if such applications are made and the work carried on in earnest, at least some of the grievances will be redressed.

A True Translation.

(Sd.) GANESH KESHAV VAIDYA,

3rd Translator.

6-9-97.

No. 21.

[*Translation of the leading Marathi article printed in columns* 3, 4 *and* 5, *at page* 2 *of the* "*Kesari*" *newspaper, dated* 16*th February* 1897, *having at the foot of page* 4 *thereof a note as translated*:—"*This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar* (*Peth*) *at Poona, and published by Bal Gangadhar Tilak.*"]

The Bubonic Plague and Government.

As soon as the European nations learnt that the plague in Bombay did not abate, although lakhs of rupees had been spent for rendering the city quite clean, but that on the contrary it was spreading with great force in all parts of the city, that although migration had reduced the population of Bombay by three-fourths, the daily mortality was still increasing a good deal, and that the bubonic fever broke out wherever the Bombay people had fled, great restlessness was caused among them. All the European nations resolved to hold at Venice a conference of scientific men from different places to discuss [the nature of] the bubonic plague and the means to check its spread. The Secretary of State [for India] was very much alarmed when he saw that all the nations there (*i.e.*, Europe) were engaged in thinking of preventing the vessels coming from India, from touching at any of the European ponts and of preventing the importation of Indian goods also into

Europe; and thinking that things had come to such a pass owing to the negligence in the matter of the Bombay Government and the Government of India in the beginning, he gave very strict orders to His Excellency the Viceroy to adopt special measures in the matter. The result of all these circumstances was that His Excellency the Viceroy and his Council got an Act called the "Epidemic Diseases Act" passed on the 4th of February 1897 in order to acquire for himself special powers and to give similar powers to the Governors of the different Presidencies for the purpose of checking the spread of the plague. By virtue of this Act the Government of India and the Local Governments have, in order to prevent the spread of epidemics, got full powers during the present epidemic and on any similar occasions of dangerous epidemics in future to inspect steamers touching at or leaving any port in India, to detain their cargo and passengers, similarly to examine persons travelling by railway at any station, to place such restraint as may be thought proper, to remove affected passengers travelling by it to hospitals erected for [the treatment of] epidemic disease and to do several other things. Elsewhere we give the rules regarding the powers which the Bombay Government has under the Act conferred upon the Municipal Commissioner of Bombay. A perusal of those (rules) will show that Government has now become very strict ndeed in this matter.

The plague is a disease of such a nature that if at the outset proper remedies are adopted to prevent it from spreading it is possible that perhaps it may disappear in its embronic stage. But if it once spreads and especially if it spreads to more places than one, it certainly becomes uncontrollable. It is a sort of fire igniting by slow degrees, and when once it has spread over a considerable area even if a number of water pumps or other [fire-extinguishing] machines of any kind are applied, it becomes difficult to extinguish it. It only subsides of itse when the fuel itself is exhausted or when owing to the change of seasons of through some other cause, its burning power diminishes. Scientists have not yet been able to discover even the natural causes which take place in the world for the origin and destruction of such a disease. All that is known concerning this (disease) is that when the disease breaks out it can be communicated from one person to another, and by this means it goes on spreading to a large extent, and that it disappears when certain causes for its destruction which are beyond human control take place. We have suggested above that it is possible to check it at the outset and that in only one way. It is to stop altogether communication of the place affected by the disease, that is to say, of the persons and articles therein with other places. This method could perhaps to a considerable extent have been adopted when [the plague] had just appeared in Mandvi. But whether because through our misfortune the Government Doctors did not understand the form which the plague would take in future or because of their negligence or owing to some other cause such a step was not taken. It was only after the epidemic had spread to a considerable extent that steps began to be taken to separate the plague-stricken from the healthy. This is what is called "segregation."(a) Now, although from a scientific point of view separation of the afflicted or segregation is of great use, still the adverse notions of the community about hospitals, the arrangements

[(a) The English word "segreg .tion" is used in the original in Marathi characters and also in the English characters in brackets.]

in hospitals, the usual way in which the rulers conduct themselves towards the ruled and divers other reasons have rendered it almost impossible to bring it (segregation) into practice, as is clearly indicated by the example of Bombay and Poona. To what extent the impression that a hospital means a place for killing persons has gained a wide expansion and taken a deep root in our community will be easily seen from the fanciful rumours in connection with this, which one often hears in Poona and in Bombay. These rumours are so absurd and foolish that we do not think it proper even to mention them here. This terror about hospitals has been aggravated by the acts of some of the unscrupulous policemen. Howsoever baseless these adverse notions about hospitals may be, they have got so strong a hold on their (people's) minds that to get rid of them is not a work which could be accomplished in one or two months or years, but several generations must pass for its [accomplishment]. The whole community being firmly determined not to send a [plague] patient to the hospital, even though he were to die [at home] for want of treatment, the Municipal officers do not even know if a plague case has occurred. Not only this, but the said officials being on inspection duty in the district most affected by the disease people remove the sick person in the house from that part of the town to some other part of it. We know of many cases of [plague] patients having been so removed from Ganesh and Ravivar *peths*(*b*) to Budhwar, Vetal, Sadashiv, Bhavani, Shanwar, Kasba and other *peths*.(*b*) It is clear that the result of this is quite contrary to the intended object. Thus the very arrangement brought into force for checking the spread of the disease indirectly results in this way that there is great assistance given to the spread of the disease from one part [of the town] into other parts. The work of segregation, that is, the separation of the diseased is of such a nature that it can never succeed even to a small extent, without the co-operation of the people. It appears that the officials of the ruling class do not understand sufficiently this state of things. For if they did, the Government would not have rejected the rules which were submitted for the sanction of Government and which were framed by the local Municipality as to how and under what circumstances segregation was to be enforced. Government want to segregate all the patients (plague patients) and in trying to do so on an average even one patient per day is not sent to the hospital. If the arrangement proposed by the local Municipality had been adopted and the unlawful threat of the police stopped, the towns-people would not have been so much panic-stricken; thousands of persons who have now gone out from here would not have so gone; hundreds of patients would not have been removed from the affected *peths*(*b*) to the other *peths*(*b*) or to other towns; the spread of the disease caused or likely to be caused by their removal would not have taken place; and the sick would not have been concealed as at present; and the terror about hospitals would have been lessened at least to a small extent and at least a few more sick persons than at present could have been segregated. We personally visited the plague hospital erected near the *sangam*(*c*) jointly by the three Municipalities. We feel convinced that the arrangement and the convenience there are likely to be comfortable at least to the lower classes of people. But the huts will not suit the middle and the higher classes.

[(*b*) *Peth* is a district or division of the town of Poona.]

[(*c*) *Sangam* means the confluence of two rivers. The confluence of the two rivers in Poona is called by this name, and the locality also is known by the same name.]

We have suggested to the managers of the hospital that somewhat better huts may be erected for these classes at a little greater outlay, and that, if necessary, some fee may be imposed on the patients. Whether such arrangements are carried out by them or not, if the people themselves collect some subscriptions for the purpose and erect private hospitals on different, good and convenient sites and give the management of them into the hands of persons selected by themselves, the arrangement would be satisfactory. Some persons here intend organizing such private hospitals, and we suggest that they should soon carry out that (intention). The Government has appointed for our city an Assistant Collector to enforce segregation; to remove filth from the houses of the people; to remove tiles or bore holes in the walls [of the houses] for ventilation, if they are ill-ventilated; to remove people living in exceedingiy dirty and ill-ventilated localities to other places; to disinfect, in whichever way that may be necessary, the room, the clothes, and the house or anything belonging to a person who may have died of the plague, and to carry out other things strictly. Mr. Rand is the Assistant Collector who became famous at Satara, and is to take charge of these duties in a day or two. From the present inclination of Government, his administration will be carried on, it appears, with much rigour. But it may be safely inferred from the segregation incidents that such rigorousness in administration will not be of as much use as can be expected, and will cause greater opposition in securing the intended object. We are of opinion that the co-operation of the people secures these things better than mere force. Rigorousness of administration, far from being of as much use as could be expected, on the contrary produces among the people, who begin to think that the measures devised for arresting the evil are themselves another evil. The Bombay and the Poona people are now more afraid of the Government operations than of the prevalence of the plague, as will be easily seen by anybody. That such a state of things should exist is not good in any point of view. Fear and anxiety are in themselves one of the causes of disease. In the science of medicine this is an established principle in connection with all the diseases. Two days ago a meeting of all the doctors here was held to discuss this very topic of the day, and it is said that the chairman of the meeting is shortly going to send the resolutions passed at the meeting to the local Municipality and to the Government. In that meeting all these points were discussed and it was, we understand, resolved by majority that if segregation and other remedies were applied after consideration and also with a practical common-sense view and not merely with reference to the scientific view, people would not become panic-stricken and the wished-for object would be achieved in a greater degree. We shall conclude by setting forth in brief some suggestions that we have lastly to make on the subject: (1) that in the Poona city the enforcement of 'segregation should be carried out by Government in the mild way already proposed by the Municipality; (2) that the communication between the different cities and towns should be so well regulated that the plague will not travel from place to place; (3) that private hospitals of the people should be organized and their management entrusted to competent persons; (4) that in the hospital erected by the Municipality arrangements should be made as suggested above for the middle or upper classes of people; and (5) that lastly it should be borne in mind that any restrictions or arrangements in this respect to be generally made by the Municipality or by Government should be mildly yet firmly carried out with due regard to the condition of the people, the customs, habits, ideas and financial positions of the people, &c., so that the object in view

will be accomplished at least partially, and there would be no serious discontent caused among the people. We are aware that the Government itself is placed in a dilemma.

But whatever may be the case, Government must bear this in mind that it is impossible to stamp out the disease, which has once come into India, at once, by taking sanitary measures to any extent or by enforcing segregation. Because the European nations are terrified, it is no use for us to lose our heads and adopt silly remedies, and we hope that though Government has passed such a stringent enactment, still it will not be much applied to places over which the plague has once got a firm hold, but will be applied in regulating the intercourse between different towns. Every convenience has its drawback. If railways facilitate locomotions, the plague too can go from Bombay to Benares on the third day. Set this right first, and then think whether the affected in a town should be segregated or not, and in doing this pay attention to the surrounding circumstances. This is all that we have to urge, and we hope that the present law will be enforced bearing this in mind.

A true translation.

(Sd.) ANNAJI B. ANGAL,

for Chief Translator.

H. I. M.'s High Court, Bombay,

Translator's Office, 7*th September* 1897.

M. 141.

No. 22.

(*Translation of a Marathi article printed in columns* 3, 4, *and* 5, *at page* 2 *of the issue of the "Kesari" newspaper, dated* 9*th March* 1897, *having at the foot of page* 4 *thereof a note as translated :—" This newspaper was printed by Hari Narayen Gokhale at the Arya Bhushan Press in Budhawar* (*Peth*) *at Poona and published by Bal Gangadhar Tilak.*")

New Scheme for checking the Spread of the Epidemic Fever.

While writing formerly regarding this fever we had written that this fever does not spring from dirt alone; nor does it disappear by the removal of dirt alone. It is true that dirt is instrumental in its spreading or in the increase of its poison; but besides dirt it is found that many other things equally help like dirt the spreading of this disease. When once the poison of this disease has entered into an insufficiently ventilated house, it does not completely disappear unless it is removeed by digging, scraping or burning; hence it has many times happened that when people who had, left their houses during the plague return after the epidemic is over and once more commence staying in their respective houses, then the same epidemic again comes into existence. In this manner at Hongkong plague three times—that is,—in 1894 95, 96, appeared and disappeared. And if the present cause of eradicating the plague be continued, then it is apprehended that the same thing will happen even

in Poona and Bombay. People should fully bear in mind two things, and they are these:—(1) The living poisonous germs of this fever enter a country or a house from outside by some means or other, and when it has once entered into a house, it makes its fixed lodging there after taking its growth from close air, dark or damp place, or dirt; and (2) if one has to completely remove this lodging from a house or a country, it is of no use to remove the dirt (alone) from the whole country, but the contact of the fever-poison must be checked as far as possible. And it is this checking of the contact in this manner which is called in English segregation (segregation) (*a*) and the abandonment of a place which is advised (in the medical work called) *Sushrut* is for this very purpose. Only the other day it happened here that in a house two females were attacked and they were removed to the hospital; but as other persons were allowed to continue living in that somewhat small house, the remaining two males were attacked; and the whole family was levelled to the ground by fury of this fever. There are also additional other instances like this. It now stands as almost proved that when the devil of this fever enters a house, and if the house be not very spacious one, then there is no other way at all of avoiding the contact of this disease than by abandoning the house. Bombay is not now insufficiently cleaned, sewers, gutters, drains, &c., &c., are all washed and cleaned everywhere, or rather it will do if we say that the very entrails of Bombay are taken out and laid bare open and cleaned; but still the fury of the plague continues almost as before. We say almost only because formerly the number of persons dying from fever was from 125 to 150 per day: and the total number of deaths was 250, which numbers have been now reduced to 100 and 200 respectively. But whether this difference is due to the lessening of the plague or by the outgoing of five lakhs of persons from Bombay out of the population thereof of eight lakhs cannot yet be positively ascertained. But in Poona on an average about 60 or 65 persons die in all in a day, out of which, and out of these it appears from the daily average of deaths of last year that about 40 in the least must be dying from this fever. The Government have now discovered some new means of averting this danger. But His Excellency the Governor has said that if the plague cannot be checked, though six months have elapsed in cleaning Bombay, then it is necessary to have recourse to some other arrangement, and as to what this arrangement is the same is communicated in a letter from His Excellency to the President of the Bombay Municipality and in a letter to General Gatacre, the President of the new Committee appointed for preventing the spread of fever at Bombay. This arrangement, it was told by His Excellency to some leading men of this place is now to be applied also to Poona. Therefore it is necessary to give some explanation about this arrangement.

(*b*) The new arrangement is this that at first this work is to be entrusted to some few Government officers. At Bombay a Committee is appointed consisting of an Engineer, a Doctor, a Municipal Commissioner, and a Military Officer; and it is invested with all powers, while in Poona all those powers are concentrated in Mr. Rand. The Municipalities of both the places have now no power in this matter. The daily sweeping and cleaning and lighting must be done by the Municipality. They are not deprived of that duty. But the remedies for checking the plague will all be made through the Committee. His Excellency the Governor has said that no one should understand from this that the Government considers the Municipality or the Local Self-Government of less worth; and the reason of this is given, that to take

[(*a*) The text of this is thus written in English within the brackets in the original].
[(*b*) Thus printed as a heading in the original.]

measures for checking the bubonic fever is not merely a local work now; but it has become one of the works of the Government of India. In short, what His Excellency the Governor says comes to this, that there is no cause for the Municipality to be sorry that the Municipality is deprived of its work.

Now as to what this new Committee or Mr. Rand, the Chief Plague Officer at Poona, has to do, let us see the same. His Excellency the Governor is convinced that if this epidemic is not checked but allowed to spread itself freely anywhere, then this disease shall never abate. Therefore the first duty of Government is to prevent the contact. For this purpose a two-fold check is necessary. Firstly, to remove the people suffering from this epidemic fever out of their houses and to make convenience for them in the hospital, and (secondly) not to allow the people of plague-stricken places to go to and wander in other towns and villages. But after making good convenience in the hospital the relations of the patient are to have full liberty to see him and be convinced, after personal inspection, that the patient is well taken care of. Besides, there is no objection if each caste or community were to build their independent hospitals. Further, His Excellency the Governor says that persons in the service of a patient attacked with epidemic fever or persons who are in immediate contact with him or persons staying in the room in which the patient may be lying are more liable to be attacked by this disease, and so they also should be kept outside for some days and then allowed to return home, whereby the spread of the plague shall be lessened to that extent. In order to bring into force both these things, a third thing is necessary; and it is this, that the Government must first come to know where the disease is prevailing. For this purpose at first persons are to be appointed for house-to-house examination at the interval of every two or four days. There are numerous gossips prevailing in our town that these men are to oppress (people) as they like, but they are totally groundless and false. The examination which is to take place is only for the purpose of preventing the people from concealing in a house a person attacked with the plague, as is at present done. If any one will conceal or try to conceal, then only from that place a sick person shall be taken out forcibly, otherwise no one should have the least trouble to undergo from this examination. Such is the order of His Excellency the Governor. A strict rule is made that no plague officer shall touch women, and lady doctors are to be specially appointed for them. And His Excellency the Governor has expressed in the presence of the plague officers that the plague officers are in like manner strictly forbidden from hurting the minds and religious notions of the people without any reason by entering in any part of a house. Besides at the time of house-to-house examination the leading people of the ward or the lane will be taken in company. In short, the Government in no way wishes to interfere with the customs and manners of the people or to apply more force in any way than is necessary for these things, *viz.*, for the purpose of taking to hospital a patient attacked with epidemic fever and to remove out for some days the persons that were in the patient's room, or the people who were in immediate contact with him. The abovementioned two things are to be done only for the benefit of the people themselves, and His Excellency the Governor desires that the people should not be afraid of these things and leave their houses by unreasonably misunderstanding things; not only this, but the Governor requests the above said leaders to help the Government in this work by removing the misunderstanding of the people, by assuring them that they will not be oppressed, and by explaining to them the importance of the rule made for

the purpose of checking the contact and thereby making people to abide by those rules.

The people must be thankful for this request of the Governor. But if such suggestion as is made to the leaders of the people be made to the Government Officers it will be alright. Otherwise if on one side help is demanded from the people, and if on the other, the Government Officers will not only utterly disregard their suggestions, but also refuse to talk with them, then from this the desired object will never be gained. Perhaps His Excellency the Governor may not be aware of the fact that the officers insisted even upon the Hindoo Hospital being built on a certain specific place. It is a lamentable fact that the desire to mix with the people, and carry out the things which are beneficial to Government, as well as to the people which was found existing in former European officials is not found in the present European officials, and what spoils the matter is owing to this defect. No one will be sorry if measures are adopted as they are directed to be arranged for in the letter of His Excellency the Governor: but the people doubt whether they will be so carried out by the subordinate officials, and we cannot say that this doubt is groundless. The remedies necessary to check this epidemic—(c) to prevent it altogether is not clearly a thing in our power—must, as His Excellency the Governor said, be adopted before the beginning of the rainy season, but there are two ways to bring these remedies into force, first by mixing with the people and secondly by force. The opinion and order of our Governor is to bring into force the remedy of the first sort, and we are sure that if the subordinate officials behave in that way there will be no objection to carry out the work of checking the epidemic with the good understanding and sympathies of the people. No one desires to have this plague; but the people are now afraid of the needless trouble and oppression than of the plague itself. There will be no ground for complaint for anybody if no oppression is made and if things are, as His Excellency has assured, arranged in a way that all things shall be done according to the notions of the people. It is true that no one as yet is oppressed and those thousands of people who the other day left the town by any conveyance that they could obtain, did so, we are forced to say, through sheer folly. It would now be well if the people bear in mind the things which His Excellency the Governor told yesterday and return even now, keeping in mind the following saying of Ashvathama (*d*)—"If after abandoning the battle-field, there is no fear of death, it is worth while to go elsewhere"—and remain hereafter taking proper precautions for checking contact and have firm faith in God. If His Excellency the Governor purposely comes here from Bombay and tells that the people will not be needlessly oppressed or ather assures the people, then it is mere foolishness to entertain unreasonable doubts runless something of the sort really takes place. We think that even at the time of the Holkar's plunder of Poona, so many people did not leave the town as they did the other day. It may be said that this may be the effect of the increasing effeminacy or ignorance, or of misunderstanding.

A true translation.

(Sd.) NANABHAI SADANANDJI KALE,

for Chief Translator.

H. I. M.'s High Court, Bombay:

Translator's Office, *7th September* 1897.

(*c*) (The text of this is thus between two dashes).
(*d*) (A great warrior of the Epic Poem Bharat).

No. 23.

[*Translation of a Marathi article printed in columns 4 and 5 at page 2 of the issue of the "Kesari" newspaper, dated the 16th of March 1897, having at the foot of page 4 thereof a note, as translated:—This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar (Peth) at Poona, and published by Bal Gungadhar Tilak.*]

The Present Violence in Poona.

It may perhaps be said from the burning of the household clothes, &c., in several places owing to the plague that Shimga (Holidays) have commenced this year in Poona eight or ten days earlier than usual. Government have firmly resolved to eradicate the plague from the town, and it is (only) two days since the measures which His Excellency the Governor announced last week have been commenced. The bugbear and fear that the soldiers would come into the town and enter our houses must have somewhat disappeared. We don't know why these soldiers were (at all) brought to do this work. In His Excellency the Governor's speech there was no clear mention that soldiers would be brought for this work, nor were soldiers brought in Bombay for that (plague inspection) duty. They are employed to do the duty only in Poona, and this idea must have originated from the brains of some subordinate officer. Let it be. It is a matter of consolation that although soldiers are employed, they are conducting themselves pretty satisfactorily. There are complaints that in some places the soldiers entered the kitchens and poluted (articles by their touch). But from our own experience we can positively assert that the blame in a great measure attaches to the Native gentlemen accompanying the soldiers. The only reason why His Excellency the Governor requested the gentry in Poona to accompany these (soldiers) is that they should explain wherever necessary to the men on search duty how to conduct themselves in the house of natives, and if they do not discharge this duty (satisfactorily), it will have to be said that their appointment for this work is of no avail. At such a time at least the houses-owners at any rate should come forward and drive this whirlwind from their houses straight on. In short, if the house-owners or the gentlemen accompanying the search party do their duty properly, there is no probability of any kind of annoyance from the soldiers. Now whether the soldiers should enter the houses or not is altogether a different question, and with respect to it we have already recorded our opinion above. But instead of thinking much over what is unavoidable, our only concern to-day is to see how to get over the present crises safely. We are very glad to say that the leniency observed in the present arrangement is due to His Excellency the Governor's goodness and order, and for that we offer many many thanks to His Excellency the Governor on behalf of the people. With a view to give full effect to the somewhat good arrangement chalked out by His Excellency the Governor gentlemen from the town should never neglect to accompany the search parties of soldiers from house to house. Relying on their confidence alone His Excellency has issued orders for lenient search, and gentlemen from among us should bear in mind that if they themselves now neglect the blame that the search (orders) were not carried out properly will in a great measure attach to themselves. The employment of soldiers for inspection was not only unnecessary but was also undesirable, but now it is useless to dispute this matter. We must now take full advantage of the concession allowed by His Excellency the Governor and which Mr.

Rand has also promised to grant, and we hope our leaders will not fail to take dvantage of it.

So far as regards the people. We shall now consider the arrangement itself. We are of opinion that the present management is oppressive in one way. We think that the assemblage of regimental sowars, British as well as Native sepoys, Police officers and gentlemen (from place to place) is of no greater use beyond a show (inspiring awe) and making a report that measures on a grand scale were adopted. Why this great ado ? Even admitting the soundness of the object in taking away (segregate) the plague patients and stamp out the disease because the Hindus keep the plague patients in the house and thereby propagate the infection from place to place, still to carry out the object it is not at all necessary to make so great a fuss. Hindus might not give out the information of plague cases and conceal them, as they are unwilling to see patients taken away, still they would not conceal dead bodies. Bearing this in mind if a general rule had been made and that " in case a death takes place in a house of the owner who failed to give information of the disease he shall be punished," the work which is now done or expected to be done by this show would have been done. This did not require the employment of soldiers nor the search. But as our wise English Officers do not require our advice and as we are humbled in every respect, we cannot avoid such difficulties. Well, we have to make one or two suggestions with respect to search. They are as follows :—Instead of overcrowding in a lane as at present, had the houses been distributed and the work of each party been determined, the work of inspection would have been done earlier, quietly and without mistake; as the Municipality has now been deprived of all its power, we hope the new Plague Committee will consider the matter. The other mode of inspection is to disinfect (clean) the houses where plague deaths have taken place and to destroy the things worn by the patients. It seems great mismanagement still prevails as regards this work. The house where plague death has taken place is marked with a red line. The fumigating party comes and fumigates the house and then the white-washing party comes and white-washes it, and both the parties draw horizontal lines across the perpendicular line and walk off. This is the arrangement. From this it does not follow that there is any order to burn each and everything found within the house marked with one red line. Only such articles in the room where the death takes place as were worn by the dead are to be burnt. For this reason the owner of the house should point out such articles or bring to the notice of the search party that he has cleaned the room himself. Beyond this, that one himself should burn the things worn by a plague patient and leave the room vacant for some days is the best way. When the rooms are vacant, the soldiers may clean them in any way, and for that no fear should be entertained at all. People should bear in mind that if any new things are kept in the room, they are also liable to be burnt for nothing. Occasionally it is possible that such things may be misappropriated, and we hear in one or two places (things) have been so misappropiated. In such places and in houses where people have gone away after locking them which are unlocked in their absence, the authorities should take due precaution for the safety of the property, otherwise plague inspection will be the means of encouraging the profession of thieves. In some places steps are being taken for such safety ; but no arrangement has been yet come to in this matter as it ought to be. The nature of plague is

growing very alarming from day to day although more than half (the population) of Poona has gone away. Still last week, the total mortality was one day 84; so it can be safely said that the plague in Poona is one and-a-half times more virulent than in Bombay. It is plain that stringent measures ought to be taken to stamp out such a virulent plague. But in the enforcement of such measures due care should be taken, as said by His Excellency the Governor, to pay due respect to the customs and religious prejudices of the people and to protect their property, and we hope it will be done.

A true translation.

(Sd.) GANESH KESHAV VAIDYA,
Third Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, *8th September* 1897.

No. 24.

[*Translation of what appears under the heading "Editorial Notes" printed in column 2 at page 3 of the "Kesari" newspaper, dated the 18th May 1897, having at the foot of page 4 thereof a note as translated:—"This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar (Peth) at Poona, and published by Bal Gangadhar Tilak."*]

Elsewhere is published a notice signed by Mr. Rand and promulgated in the city which states that the plague in Poona has now almost subsided, and that the inspection by (British) soldiers will be discontinued from the 20th instant. There is still a (solitary) case or two of the plague in the city and the people residing in a locality where there is a plague case will, as heretofore, continue to be segregated even after the inspection ceases. All plague cases will be brought to light by the regulation that no corpses should be removed for burial or cremation unless a doctor's certificate, stating that death has not resulted from plague, is procured. It is a gratifying thing that giving consideration to this plan suggested by the people, even the inspection by the black coated is not kept up after the 20th instant. The Hindu Plague Hospital and the mess arrangements in the segregation camp must be continued as heretofore for some days even in the rains after the inspection is stopped. The local Plague Committee had ordered that the Hindu Plague Hospital should be closed from the 28th instant. To a deputation which waited on Mr. Rand to request him to cancel the order of the Plague Committee, Mr. Rand had replied that the order of the Plague Committee was to be upheld. On receiving this reply the Managing Committee of the Hindu Hospital submitted their protest to the Plague Committee and now Mr. Rand has replied that he has no objection to the Hindu hospital remaining open during the rains. The Hindu hospital must therefore now be equipped for the rains. Subscribers will therefore be good enough to remit two months' further subscription for the hospital. It is obvious that the Hindu Plague Hospital and the arrangements in the segregation camp must be continued with the same vigour at least for a couple of months more.

A true translation.

(Sd.) GANESH KESHAV VAIDYA,
Third Translator.

H. I. M.'s HIGH COURT, TRANSLATOR'S OFFICE,
Bombay, 6th September 1897.

No. 25.

[*Translation of the Marathi leader printed in columns* 4 *and* 5 *at page* 2 *and column* 1 *at page* 3 *of the issue of the "Kesari" newspaper, dated Tuesday, the* 1*st June* 1897, *having at the foot of page* 4 *thereof a note as translated :—" This newspaper was printed by Hari Narayan Gokhale at the Arya Bhushan Press in Budhwar* (*Peth*) *at Poona and published by Bal Gangadhar Tilak."*]

HERO-WORSHIP.

By perceiving a phenomenon in creation, which is grand by reason of its delightful or awe-inspiring, delicate or dreadful character or of a commixture of both properties, and by hearing and cogitating upon the holy lives of great men, the feeling of wonder, natural in man, is spontaneously awakened. It is equally natural in man, when he admires some person's deeds or something, to show his humility (*i.e.*, to pay homage) to such person or thing by means of obeisance (and) to manifest his love by worship and devotion. To admire and love any visible manifestation of God anywhere, be it in inanimate or animate creation(*a*) (that is to say, for the spring of devotion to ooze from the heart)(*a*) is incomparably the best virtue in man. No nation will be found which does not worship a hero; and the community in which this virtue gradually disappears should be considered moribund. In Europe, although the time had arrived for vast kingdoms to be torn into shreds in consequence of some political and religious revolutions and of the diminishing faith of the people in the Christian religion, it was this hero-worship which saved them from danger. It is the opinion of Carlyle that there is no better means than (this identical) hero-worship to (secure) the existence and (ensure) the prosperity of a community. All the saints, sages and pious men of our country emphatically told their followers not to teach a person any science or art who was destitute of devout feeling. For, the actions of a person in whom no devout feeling in relation to any personage or thing is engendered must necessarily be always such as to plunge the community into the depths of misery. It is quite natural that Satan should find his pleasure abode, or that the enemies of man, such as lust, anger, &c., should hold their tumultuous festivity in that mind which does not even in some odd nook and corner harbour the sense of admiration. Just as we worship the incarnations which God frequently assumed for the purpose of (re)establishing religion after it had declined, just as we hold festivals in their honour, even so people in other countries also held and are also holding festivals in honour of the perfect incarnations of God in their respective countries. Just as we are the worshippers of the incarnations of God like Shri Rama or Shri Krishna who had assumed human forms for the express purpose of annihilating the wicked, even so the ancestors of Europeans had become the worshippers of "Odin" and "Thor," looking upon these person(ages) as the very images of God. Just as the Rama incarnation or the Krishna incarnation was not merely inculcating religious tenets but for the annihilation of bad men, even so "Odin" and "Thor" were very valorous persons and were the founder of a new kingdom, and, by that means, of religion. As the people of the west or the Musalmans respect Christ or Muhammad who were the founders of new religions, even so we in India also worship and adore the exalted Shankaracharya, Buddha, Jina and other preceptors of religion. It was owing to the afflatus of hero-worship with which the ignorant people wandering through the sandy deserts of Arabia were filled at the sight of Muhammad, that this community, who

(*a*) (*Sic.*)

managed somehow or other to maintain themselves by tending (flocks of) goats and sheep, overran the whole region extending to the shore of Spain on the west and to the confluence of the Ganges and the Jumna on the east. The world was under the impression that Arabia was nothing but a conglomeration of sandy particles; but directly the divine lustre in Muhammad's eyes fell on it, all felt that Arabia was not filled with particles of sand, but that the sandy deserts of Arabia must have been composed of combustible particles of gunpowder. Just as there flourished in Europe saintly persons like Luther and Knox who purified the Christian religion, so there flourished in India, and especially in Maharashtra, a large number of saintly persons. Just as the people of Europe make a great show of their reverence for Luther and Knox and praise them with devotion, so we also get Jatras(*b*) held and celebrate festivals in honour of the saintly persons who flourished amongst us. Although the saintly persons of Maharashtra have left us, yet their deeds, their advice, are still alive. Fortunately (for us) we have not forgotten the memory of the saints and sages of former times; (and) it is for that reason that there is still some vitality in the religion prevailing in Maharashtra and that there is hope for the promotion of (the cause of) religion in Maharashtra, as was the wish of the (*c*)Samarth (*i.e.*, mighty). The national religious festivals held in Maharashtra have not allowed a complete divorce to be brought about between us degenerate Marathas and the saints and sages of former times: this is what we owe to the great national festivals. Hero-worship lies at the root of all these,—nationality, social order and religion. There is no doubt that those who celebrate religious festivals have acquired the religious merit of not allowing the hero-worship in the hearts of the people of Maharashtra to decay, at least so far as religion is concerned, by frequently setting before their eyes the religious heroes of Maharashtra. But directly the native Government was overthrown, the memory of the political heroes who had woked body and soul for political independence and who had thereby protected our religion, became quite extinct. When there was native Government, we always and constantly used to cogitate and reflect upon and worship the deeds and teachings of the political heroes of the nation. In every man there is necessarily a manifestation of the Divine Presence in a greater or less degree; and at sight of the hero, the tide of hero-worship sets in and the original manifestation of the Divine Presence is doubled in intensity (strength). When Shri Shivaji Maharaj heard the stories of the Pandavas (narrated) in the Mahabharata, the inherent, inborn fire in him would not let him sit quiet and, by contact with a hero like the Maharaja, warlike Sardars began to flash amongst the Mavlas themselves, who had been lying (inactive) in the glens and valleys. It is not necessary to beseech anybody to worship heroes; nor is it necessary to preach to anybody to try to conduct himself after the manner of heroes; just as a piece of iron must needs go running after (*i.e.*, be attracted by) the loadstone, spontaneously, even so the moment a person approaches a hero at due distance, it is impossible for his mind to remain free from the results of this influence. Under the Swarajya (*i.e.*, native Government) heroes like Shivajee never went to a great distance from us; and when to our misfortune we commenced flying away further and further from them, forgetting their memory, the time for the overthrow of our rule drew to a close. It is because the people during the reign of Rajaram Maharaj had not forgotten the memory of Shivaji Maharaj that the statesmen and the warriors of the time were enabled to completely repel the locust-like attacks of armies of lakhs of Muhammadans brought by Aurangzeb against the

(*b*) Periodical festivals in honour of idols, to which pilgrims resort.
(*c*) An epithet generally applied to Ramdas Swami.

Maharashtra. It is true that the method of worshipping political heroes during the Swarajya (*i.e.*, native rule) was slightly different from the western and the present method; but, of course, nothing depends specially upon external forms. If there is hero-worship, the nation must necessarily get the delicious fruits of that excellent virtue to taste. The forms of exhibiting devotion for those who achieved mighty political exploits, before and after the nation attains its full growth, are different from each other; and the Maharashtra having passed under a foreign yoke even before it attained its full growth, the same old method of worshipping political heroes which is seen in Europe and elsewhere existed in our Swarajya also. In the Swarajya they used to worship political heroes by conferring the dignity of Sardars and hereditary Jaghirs upon those who achieved mighty political exploits. The Jaghir and the rank of Sardar continued in his family became, by itself, the memorial of that hero; and as long as the male members of that family were afraid lest "the ancestors (might) laugh," and as long as ordinary people did not forget that hero so long hero-worship prevailing in the nation never paled (or got dim) and national vigour went on increasing day by day. By hearing and recollecting the achieve ments of Shivajee Maharaj, Pralhad Niraji, Dhanaji Jadhav, Santaji Ghorpaday and other high personages, the elder Bajirao was inspired to act agreeably to the advice given by (Ramdas Swami) Samarth, (namely) " (you) should establish the Maharashtra rule alone everywhere"; and following that very example, the Marathas in the next two or three reigns overspread the whole of India. (')If my valour undergoes diminution, Bajirao will get angry, Shivajee Maharaj will laugh,(') —this mental goading produced by hero-worship was then at work. Owing to this very reason, like Napoleon who for some years partially gratified his ambition of extending and bringing the confines of France into contiguity with the confines of Europe, the Marathas continued their efforts to identify the Maharashtra with the whole of Hindusthan; and those efforts were then nearly crowned with success too. If the adverse time had not arrived for us to compete with western state-craft far ahead of us in politics, not even one part of Northern Hindusthan would have remained without coming under the rule of the Sindia or the Holkar, and Bengal would have had no go but to fall into the clutches of the Bhonslays (of Nagpur). When the annual Durbar used to be held on the Dasra (holiday), when the Maharashtra used to resound with the preparations for war, when statesmen met together to hold secret consultations, when our army stood on the battle-field to fight,—all these occasions did not fail to remind the nation of the political heroes. On all these occasions national hero-worship must needs rise to overflowing. The Swarajya was lost, the very source of the production, amongst us, of politically great men was gone, and, to our misfortune, our attention entirely ceased to turn to the heroes of former times. The Government having adopted a policy of neutrality in matters religious, the religious festivals amongst us have not disappeared. As Europeans are proud of the inspired speeches (? writings) of Dante, Shakespeare, Goethe and other poets and do not fail to manifest their devotion for them: so, (our) love and respect for Kalidas, Bhavabhuti, Moropant, Tukaram and other great Sanskrit and Marathi poets, as heroes, have not disappeared from our minds; not only this, but what is more, we have, under this rule, got an opportunity of worshipping these heroes in a special manner. Under foreign rule, the political festivals alone have stopped, and that these should stop is but the natural result of foreign rule. Hence we forgot great heroes like Shri Shivaji Maharaj, and in consequence of hero-

worship in matters political getting gradually extinct, we have utterly lost all these things, (namely) the political impressions which would have been produced upon our minds, the feelings and emotions which would have predominated in our hearts, and the political education which we would have easily received, by coming in contact with the high personages (celebrated or renowned) in the history of Maharashtra. So far we have considered the real reasons why we should celebrate the (*d*)Shiva-Jayanti festival(*d*). Neither we nor any one else can tell those who perhaps see humbug in the above festival, who perhaps believe that it is full of empty profession,—what joy, what love of truth, what glory the different national grand festivals, are replete with. Those who see nothing but cunning in the Ganpati festival and the Shri Shiva-Jayanti festival, which the country of Maharashtra has been celebrating with love and devotion, do not possess the very faculty which would enable them to know the delightful mystery in the festivals held in honour of high personages, as their minds do not afford the smallest space for hero-worship and since they are not on the path which awakens hero-worship; this is our or their misfortune. (Our) readers will notice from the accounts published elsewhere that, in spite of so many attempts made in the opposite direction by such persons as have not in them even a spark of hero-worship, the Shri Shiva-Jayanti festival is spreading itself everywhere in Maharashtra. That ladies belonging to the families of Sardars should have the desire of making an eathern image of Shivaji Maharaj that artists, poets, orators should all eulogise the virtues of the Maharaj—these are surely good signs. The action of a person who insists upon the real advantages to be derived from such festivals being shown (to him) this very day is quite as foolish as that of a patient in a chronic stage of consumption kicking off the medicine of a (*e*)skilful physician(*e*) merely on the strength of an experience gained in a day. This year persons holding degrees (diplomas) and other well educated people have taken a somewhat prominent part in this festival; and we propose at our leisure to consider what form they should gradually give to this festival. No genuine Maratha will fail to feel joyful, seeing that the people in the different places of the Maharashtra managed somehow or other to celebrate the Shri Shiva-Jayanti festival according to their means, despite the attack (visitation) of the famine and the plague overwhelming (them) from all directions.

A True Translation.

(Sd.) N. L. MANKAR,

Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, *September* 1897.

(*d*)—(*d*) Birth-day festival of Shivaji.

(*e*)—(*e*) The text is 'Dhanwantari,' the physician of the gods; the Indian Æesculapius; hence it means a skilful physician generally.

No. 26 (1.)

[*Translation of the leading Marathi article appearing on p. 2, columns 4th and 5th of the "Kesari" newspaper, dated the 8th of June 1897.(a)*]

GLORY TO HER MAJESTY THE QUEEN (EMPRESS).

Everybody is already aware of the intelligence that grand festivities on a large scale are to be held on the 21st and 22nd of June, wherever there is British rule, to celebrate the fact of Her Majesty Queen Victoria, Queen of England and Empress of India, having reigned continuously for sixty years. In England preparations are being made to celebrate this occasion on a very magnificent scale, and the festival in honour of the sixtieth anniversary of Her Majesty the Queen's Coronation will be held in such a manner as to exhibit the glory of the English realm (*i. e.*, British nation), the extent and greatness of their dominion and the magnitude of the extensive commerce and wealth of the English people. None of the King and Queens who have hitherto ascended the English throne reigned for so long a time. Of the (four) (Queens) Elizabeth, the two Marys and Anne, Queen Elizabeth alone reigned so long as forty-five years, while of the Kings none hitherto enjoyed a reign of more than sixty years. Hence it is quite true to say that Victoria is more fortunate than all of them. But there are many other reasons why Englishmen are specially proud of Queen Victoria, and all those are at present being made public (*i. e.*, explained) in their newspapers and monthly magazines. Amongst us a festival generally does not suggest to our minds any other sort of idea but the ordinary ones of eating (and) drinking, illumination (and) merry-making, &c. But the case is quite different with the commercial people of England. Although all the people are engrossed in this triumphal Jubilee of the Queen-Empress, still everybody asks himself the question how much their condition has improved under the Queen's rule, that is during the last sixty years, how much their commerce has increased, their dominions extended and their wealth augmented. In short, every one thinks that this Jubilee celebration is only an occasion for reviewing how far the British nation and the English people have advanced during the sixty years. And all manner of expressions of pride and joy on account of England's prosperity during sixty years are appearing in the newspapers and the speeches of statesmen. The most noteworthy thing of them all, however, is that the coming festival in honour of Her Majesty the Queen is as much (nay, more but not less) a sort of exhibition of triumphal feeling entertained by Englishmen for the rise of the British nation during the last sixty years as it is indicative of the people's love and respect for Her Majesty. Even readers of smaller English histories can understand that here is much difference between the rule of the present Queen of England, Victoria, and that of the former Queens—Elizabeth, Mary and Anne—and that difference is much to the advantage of the British people. The notion that a King or a Queen is the chief authority in the kingdom that could act according to his or her sweet will without listening to any one else, which is so common and which prevailed even in England some years ago, has now disappeared in England, and given place to the

(a) The foot-note on page 4 of this issue as translated is as follows :—This newspaper was printed by Hari Narayen Gokhale, Arya Bhushan Press in Budhwar (Peth) at Poona and published by Bal Gangadhar Tilak.
N. L. M.

now-prevailing idea that the sovereign is the mouth-piece of the nation, or the functionary to carry out its will. Just as in this country we show respect to our gods, worship them, present offering to them, and celebrate their festivals with faith, similarly Englishmen of the present day treat their sovereign with love and loyalty. But the worshippers and the Guravas (*b*) on our side would not be happy if their idols ate the offerings presented to them; and the same is the case with English people. Although idol-worship might appear to some derogatory, it may be said that there is indeed no other means like an image to explain to ordinary minds those notions which are imperceptible to the external senses. Looked at from this point of view, Englishmen appear to be celebrating the sixtieth anniversary of Her Majesty's coronation so joyfully, grandly and willingly only on the supposition that Queen Victoria is the living embodiment of all the rise of the British kingdom, the prosperity of the English people, and foremost place which they have attained among all the nations of the world during the past sixty years. No one (however) should imagine from this that Her Majesty the Queen possesses no extraordinary qualities or capability. Although Her Majesty fully approves of the principle that the principal duty of a sovereign lies in executing the will of the nation as far as possible, her wisdom has often been manifested in the discussion of chief political questions with her Ministers, and all her various Prime Ministers, such as Peel, Palmerston, Disraeli, Gladstone, Rosebury, and Salisbury, have praised Her Majesty's statesmanship and have held the opinion that Queen Victoria is well-versed in the politics of England and other nations. Besides the private life of this fortunate Queen is so pure (simple), straightforward and affectionate that whatever is sublime in English domestic life is fully realised in Her Majesty's private conduct, nay, it is the universal opinion that Her Majesty the Queen is the home of all these virtues. By the Grace of God Her Majesty's dominions are at present dotted all over the globe, and generally speaking about a fourth of the population of the globe are at the present day directly or indirectly under the rule of Her Majesty the Qu een. The subject will be treated in detail later on; but it is sufficient for the present to mention (here) that the British dominions had never attained to such dimensions before, nor had there been before a sovereign in England, who was so favourable to people's rights, and who reigned so long. The former Rulers of England appointed or dismissed Ministers at their pleasure or interfered with the administration of the country in some other way. But the policy of Her Majesty Queen Victoria has been quite different from the beginning. She has never exercised her prerogatives arbitrarily like previous sovereigns. It is true that according to the British constitution Her Majesty possesses some important prerogatives, but on no occasion has she asked for their high-handed exercise. In a word not only has Queen Victoria never done anything to obstruct the rise or will of the British nation; on the contrary, the English people have prospered in every way during the last sixty years. King George III. reigned for about sixty years, but the state of the people at his death, *i.e.*, at the time when Queen Victoria was born, was entirely different from what it is at present. What have we gained in the sixty years is the most important question, and if the people of India or those of Maharashtra could have answered it with as much joy, triumph and pride as Englishmen are doing today, this Jubilee festival would have proved to all still sweeter, like milk when sugar

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(*b*) A caste among the Sudras or an individual of it. They are employed in the service of the temple and are worshippers of Shiva.

is added to it. Well, we shall consider this point when concluding the series of one or two articles which we are going to write on this subject. To-day's article is only by way of introduction, and in it we mean (simply) to explain the real character of the present festival. The Jubilee of the sixtieth anniversary of Her Majesty's coronation is not a festival held merely to exalt one single individual, it is the triumphal expression of the exploits achieved or the power gained, the wealth amassed or of the progress made in commerce, arts, industries and domestic life by the British nation during more than half a century, or to speak briefly of the success of the efforts made by them to occupy the highest position among the nations of the world. What these efforts are and how they were made, how owing to them England has risen to her present eminence and how her influence has to-day extended over the whole world, we shall briefly explain these (things) in the next issue, and then we shall write about the state of our own country, *i.e.*, consider how (our) Gracious Queen (Empress) by making (her) Indian subjects happy in a particular direction on the occasion of this Jubilee is likely to add in future to the strength and permanency of the extensive British Empire. A detailed account of the many events which happened in her Majesty's reign of sixty years will be found in history by any body, but the recapitulation, *i.e.* (a brief survey) of the rise of the British Empire is far better accomplished at least in the eyes of the common people and makes greater impression on the popular mind on such occasions than in historical works. It is probably with this object in view that authors, statesmen and journalists in England have made the Jubilee an occasion for singing the greatness of the nation and with exactly the same object we also intend to make our readers somewhat familiar with it. We have already said above that no empire before was so extensive as that of England to-day. Naturally any nation under such circumstances would celebrate the glory of its Ruler with great joy, love and fervour. The present Jubilee festival is of this kind, and the deity to be worshipped therein is also by the grace of God entirely worthy of such an occasion.

A true translation.

(Sd.) N. L. MANKAR,

Sixth Translator.

H. I. M.'s High Court, Bombay,

Translator's Office, 1*st September* 1897.

No. 26 (2).

[*Translation of the leading Marathi article in the "Kesari"*(*a*) *of* 15*th June* 1897, *pages* 2 *and* 3, *columns* 3, 4 *and* 5.]

GLORY TO HER MAJESTY THE QUEEN-EMPRESS.

Expansion of the British Empire.

It has been already stated last time that the present sixtieth anniversary festival of Her Majesty the Queen's coronation is, as a matter of fact, an indication of

(*a*) The foot-note on page 4 of this issue, as translated, is as follows:—This newspaper was printed by Hari Narayen Gokhale at the Arya Bhushan Press in Budhwar (Peth) at Poona and published by Bal Gangadhar Tilak.

the prosperity of the British Empire, and that Englishmen are using it as an occasion to sing the glories of their progress made during the sixty years. It is quite proper that those who during sixty years have gained an unprecedented and extraordinary glory should manifest their pride and joy (for it) in such manner. A nation rarely gets such opportunities, and it is quite natural that our Rulers should make much of the one they have obtained. Very well; we shall now consider the growth of the British Empire during the last sixty years. This growth has not been one-sided only; but during the reign of Her Majesty Queen Victoria, England has been advancing and has now attained the highest pinnacle in all things in the expansion of (her) dominion, in commerce, in political ascendancy, (and) in social and political institutions, &c.; so much so that even foreigners ought to feel wonder struck for an instant at the sight. That the inhabitants of a small island in the West of Europe who nine hundred years ago were in quite a savage state should have thus in a short time attained to the foremost place among the dominant nations of the world is no small outcome of their intelligence, industry, energy and enterprise. If one takes up the map of the world and sees the extent of the British Empire, it will appear that the saying that the sun never sets on the Queen's dominions is literally true. Fifteen longitudinal degrees make the difference of an hour, but no such fifteen degrees can be found on the surface of the globe which do not contain at least one island under the English rule. The British Empire was already extensive before the Queen ascended the throne, but in the last sixty years it has expanded still further. In 1837 the extent of the British Empire was 75 lakhs of square miles with a population of about 21 crores. But now the extent of the dominions measures 1 crore and 15 lakhs square miles, while the population also has increased to more than 38 crores. This does not, however, include countries which though not directly under British rule are under British protection, and so far as commerce is concerned, it is such latter countries that are most beneficial and important to the English people. When in 1776 America became independent and England thus lost a considerable portion of her empire, it was feared that the tide of British rule would be at its ebb. But during the last century or a century and a quarter the English people have by their prowess acquired in the two countries of India and South Africa dominions even larger than the Free States, and attained to a glory higher than before. The Peshwa's rule in this country had come to an end before Her Majesty was born, or it may be said that Her Majesty's birth sounded the death-knell of Peshwa's Government. Well, from that time to 1837 the empire was constantly growing, but if we take the events in Her Majesty's reign alone, the suppression of the Mutiny of 1857, the war with the Sikhs, the invasion of Burma, and the successes obtained in the petty frontier expeditions must all be included in the expansion of the (British) Empire during the last sixty years. But an expansion of the British dominions, even greater than this, is that in Africa. How the English have managed to keep Egypt in their hands is indeed well known; but the efforts carried on in South Africa are really even more profitable and important. The fertile regions on the banks of three great rivers—the Nile, the Zambesi and Kongo, were discovered in Her Majesty's reign, and although almost all European nations have now put their finger in this region, still the English have a large part of it under their rule, and are steadily aiming to extend it. Besides this, hundreds of islands in the Mediterranean Sea, the Arabian Sea, the Pacific and the Atlantic

Ocean, are in the possession of the British Government, so situated that they may well protect the buoyant gamboling of their trade all over the world. It will not do to look only to the spread of (the British) rule. We must also see how British commerce has increased. The English people always take care to keep in their hands at least the trade of the country which they cannot conquer. The prosperity of England depends much more on (her) commerce than upon the spread of (her) dominions; and considered in this light, all countries in the Continent of Asia, (such as) India, China, Japan, Persia (and) Arabia, must be said to be overrun by the English by means of their commerce. The English acquired the control of the Chinese trade by taking possession of Hongkong during the last sixty years. In the same period the total commerce of England has increased about ninefold. The population of the world has been calculated to be about fourteen hundred millions, out of which about three hundred and eighty millions are under British rule; that is, by a rough calculation about one-fourth or one-third of the total population of the world are under the rule of the Queen. But if we add to these the countries controlled by (British) commerce, it will be found that half the commerce of the world belongs to the English people. The commerce of England alone with other countries amounts at present to ninety crores of pounds annually, while sixty years ago it was eleven crores. This extraordinary increase in commerce is due to the watchfulness of the English people and the superiority of their navy over other countries. England receives about pounds forty-five crores worth of imports annually, for twenty-two crores and-a-half of which she pays by exporting her own manufactures, while the rest remains in England as profit. The annual income of Great Britain has increased about threefold or fourfold during the last sixty years; and deducting expenditure it is calculated that the people there save from fifteen to twenty crores sterling annually. England has become extremely wealthy, through sources (of income) scattered over the world, such as railways, telegraph, steamers and warships (and) gold-mines in Australia, &c. The population of England has increased twofold, but by appliances of machinery, commerce has increased four tines; while this single nation has lent to other countries about three or four hundred crores of rupees. The interest on all this debt which other countries have to pay to England in the shape of commerce as well as the goods which they have to send to England in exchange for British manufactures have immensely increased the commerce of England. As all this commerce is carried on by means of British ships and steamers, the freight also goes to England. There is no part of the world where an English merchant is not to be seen. Go anywhere you please, go to the many small and insignificant islands of the Pacific and the Atlantic Ocean, (or) go to the continents of Asia, Africa and America or into regions near the North and South Poles, the activity of the British merchant is continuously going on. In a word, there is no country on the surface of the globe which has no connection with British commerce or British rule. Consider how the English people carry on and maintain all this vast business in their own interests with a steady watchfulness, and no one can help being astonished at their world-wide activity. To regulate this world-wide commerce and empire, the English people have of course the aid of telegraph, railways and steamers, and without that aid their empire would never have become so boundless. This circumstance does not, however, in any way take away from their pluck, intelligence, courage, enterprise and other qualities, nay, we may with propriety say that the spread of the empire itself

has contributed to bring these qualities into greater prominence. It is on account of these qualities that two or three lakhs of Europeans rule over thirty crores of Indian people. If there be any new scientific discovery, if it is likely to prove beneficial to them, the English are the first to utilize it at once. To whatever further extent the virtues of these people and the prosperity they have attained in consequence may reach in this way, for the present at least it appears to have reached its climax. Not only does the telegraph wire encircle the globe like a Brahmin's sacred thread, but for the protection of British commerce they have established their equipped out-posts from Gibraltar through the Mediterranean and along Arabia, India, China, Canada, &c. To protect this world-wide empire there is in England, India and the colonies together, a British army of about six or seven lakhs of all descriptions. The native army in British India and the Native States amounts to about two and half lakhs, that is, in the whole army of the empire there are two British soldiers to one native. The navy, besides, comprises one hundred thousand men, and the fleet is about four hundred strong and it is entirely in the hands of Englishmen. This huge expenditure on the navy is nothing when compared to the extent of the empire; but it is the largest in comparison to that of the other European nations, and so long as the supremacy over the sea acquired in this manner remains with the British, there is no danger to their world-wide empire and commerce. It is said by some that the present civilization and progress depend upon the two resources, *viz.*, coal and iron, and even viewed from that stand-point, England posseses these means in abundance. Nearly half of the total out-put of coal in the world is obtained from mines in British territories. In short, the whole world has been occupied by these English people. They have colonies in regions which are fit for colonisation, and although the Government in the case of some of them is for the most part in the hands of the colonists, yet none of them has yet separated from England like the United States of America. They have conquered a country like India and kept some like Egypt under their control. Besides, the English people have the trade of Persia, China, Afghanistan and other countries into their own hands as much as possible. In consequence their brisk and ceaseless activity is felt all over the world in the shape of colonisation, conquest, and commerce, or failing these as the last alternative, friendly intercourse, and consequently their power has now reached its zenith. The English people know full well where and how to use any of the above four means, and, althougth there were many difficulties such as the Crimean War (and) the Mutiny of 1857 during Her Majesty's reign, still the English people have surmounted all of them, and not only sustained but have developed their progressive spirit.

In England itself progress in political, social and religious matters has kept pace with this expansion of the empire. The steady development of railways, telegraph (and) steamships since Her Majesty's accession to the throne has been already alluded to. The population of the City of London itself, which was twenty lakhs, has grown to forty, while England has become as it were a big honeycomb of merchants and manufacturers. The English people seeing at once that agriculture as compared with industries being insignificant, people could not live unless corn was imported from foreign countries, they established free trade and have made corn cheap through out England. Arrangement is being made for the education of artizans and labourers and especially for technical education. Owing to the excessive accumulation of wealth the state of things in England has become mostly like that in Lanka, where four gold bricks had to be paid for shaving. However, the condition of the lower

classes has not much improved thereby. The real strength of the British nation lies in the commercial and middle classes. Various reforms are in progress amongst them and their means of happiness are gradually increasing. The social condition of these classes has almost been revolutionised, and had it not been for their anxiety to keep up the world-wide empire, these comforts might have perhaps acted prejudicially on their good qualities. The spread of education, sanitation, good houses and roads in towns, advancement of women, posts, telegraph, in these things so rapid a progress is being made that he who saw the state of England sixty years ago will notice a world of diffierence between the past and the present condition of England. The credit of abolishing the slave trade also belongs to Queen Victoria's *regime*, and proves clearly that this commercial nation is also sometimes actuated by unselfish and sublime impulses. It is unnecessary hereto describe minutely the domestic life of the English middle classes, but it may be safely said in general that there is now more of artificialness in it than before. This is manifestly the result of vast riches and plentiful means of comforts. Well, the festival which is being celebrated as an emblem of their prosperity by the people of a nation that has thus reached the height of wealth and power is quite appropriate from their point of view. We also participate in their joy, as they are our rulers; only it cannot be said that we have prospered like them during the last sixty years. We intend to conclude this series by presenting a picture of our condition to our readers in the next issue.

A true translation.
(Sd.) N. L. MANKAR,
Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, 1*st September* 1897.

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[*Translation of the leading Marathi article in the* Kesari (*a*) *of 22nd June* 1897, *p.* 2, *cl.* 3, 4, *and* 5.]

GLORY TO HER MAJESTY THE QUEEN (EMPRESS).

CONDITION OF INDIA.

Our readers must have already from (our) preceding articles grasped the fact that the people of that nation whose empire has in the last sixty years grown in extent by three quarters, whose population has doubled in the same period, whose wealth has increased threefold and commerce nine times of what it was sixty years ago, and that has risen to the pinnacle of its power,—(the people of such a nation)—are holding a grand festival in honour of their own prosperity on the occasion of their Queen's Jubilee. Let us now see what change has taken place in the condition of India during the same period. There is a rule in our science of Rhetoric

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(*a*) The footnote on page 4 of this issue, as translated, is as follows:—This newspaper was printed by Hari Narayen Gokhale, at the Arya Bhushan Press, in Budhwar (Peth) at Poona and published by Bal Gangadhar Tilak. (Sd.) N. L. M.

that when Ravana has been described at great length, there is no need of describing Ramchandra very much. To say merely that he conquered such-and such an enemy does in itself give one an idea of the prowess of Ramchandra. The same rule applies in the present case. If after describing the vast dominions, commerce and the high position of England, it is told that India is one of the poor dependencies under the sovereignty of that people, intelligent readers will not require any more description of our condition. The only circumstance that gives us pleasure is that our rulers are very wise, watchful, intelligent and lords of not only nine crores, but more than nine hundred and nine crores. For the rest if one looks to the condition of India one is compelled emphatically to say that the present is the sixtieth celebration not of our prosperity but of our decline. Well, to-day we shall avail ourselves of this occasion to explain in some detail the two sides of this (question). Her Majesty the Queen was born in 1819 Anno Christi; the Peshwa's Government had at that time just come to an end. Since that time till 1837, *i.e.*, Her Majesty's accession to the throne, almost the whole of India had come under British rule. The wars of conquest that took place in India after Her Majesty's coronation were only the expeditions against the Sikhs in the Punjab and the Burmese in Burma. These extended the boundaries of the empire East and West, and the expeditions that took place against the large and small savage or semi-civilized tribes on the frontier also extended the boundaries of the empire in several places in the North and the North-West. Besides, owing to the large Native States which were annexed in India during Lord Dalhousie's *regime*, or provinces like Berar being taken over for the expenses of the contingent (forces), the red-line of British rule advanced considerably even in the interior. Either as a consequence of this or some other events, a big storm burst over the Queen's Indian Empire in 1857, but even that was dispelled, and to-day the British empire is firmly established from the Himalayas to Cape Comorin and from the Khiber Pass to the Eastern boundary of Burma. All are aware as to what change was brought about in the system and policy of Government by the Mutiny of 1857. It is also well-known in history that after that year Her Majesty the Queen took up the reins of government in India in her own hands, and by publishing a great proclamation in 1858 laid the foundation of the administrative policy to be followed in India. The first draft of this proclamation is said to have been quite worthless. Of course, Her Majesty did not approve of it, and it should be remembered that all the weightiness, the foresight (*i.e.*, statesmanship) or the keen solicitude for the people's welfare observable in the present proclamation, are all due to the first draft having been altered in accordance with Her Majesty's orders. If Her Majesty's good wishes had been given effect to according to her command, to-day's Jubilee festival would have proved to the people of India as much an occasion for joy and pride as to the people of England; but, unfortunate as we are, things did not turn out accordingly. It must be admitted with the greatest reluctance that all the reforms in the administrative system that were effected from 1857 to 1897 had, with some exceptions, the tendency to put more and more power in the hands of the executive and to make the people completely disarmed and helpless. This policy reached its climax in 1877 when Her Majesty the Queen was declared the Empress of India. Those very princes whom the British Government formerly regarded as their allies now became subordinate allies; while along with other British subjects the condition of these princes also declined, so that all of us have now become equally powerless and dispirited. In short, the saying that the prosperity of one means the adversity of another, applies fully in this case.

It will be seen on a little reflexion that the phenomenon which is observable in the science of astronomy is also observable in the science of politics, *viz.* that the moon, if in conjunction with the mid-day sun, becomes invisible in his rays, and if in her full glory she is in the nether world. The greatest glory of the moon shining in borrowed light at such a time is to please the people in the nether world, but the insignificance of this glory compared with that of the mid-day sun is evident from the fact of the fading away of her lustre in his immediate presence. Our India has to-day reached a similar condition. Whatever be the reasons for the deterioration of this country, none can deny the fact that a hundred years ago eminent warriors, statesmen and politicians were born in this country, and if anybody possessed vigour, learning or intelligence, there was then full scope to be obtained for their development. But now not only have all these qualities been rendered useless by the superior lustre of the British rule, but disuse is leading to their extinction, and we are becoming so weak or lifeless that anybody may lord it over us or tyranize over us all, or one might say we have already become so. Unfortunately we are having a daily experience of how the people of ony country degenerate when continually pressed under the roller of foreign rule; and as it is the custom when praying to God to say that he is omnipresent and omniscient, while we (mortals) are little knowing, and he is all just (*i. e.* He is the universal arbiter) while we are mere atoms, exactly the same language we have to use when we consider the relations between the two countries, England and India. This is the secret why the Irish have remained indifferent on the present occasion, although they have got more rights than India. The Hindus being naturally of a different disposition are celebrating this festival according to their means, but no one should wrongly infer therefrom that their condition is better than that of Ireland.

Several English officials and writers say that the condition of India has vastly improved during the last sixty years. The commerce of India which has now grown up to about two hundred crores annually was only twenty-one crores sixty years ago. Railways of which there were none extend now to twenty thousands of miles. The total debt is about three hundred crores of rupees, and besides about the same amount is invested by English merchants in Indian trade. Of the two hundred crores of trade mentioned above, about one hundred and seventeen crores are exports, while eighty-three are imports, that is to say, we have to pay thirty-four crores of rupees as tribute for foreign rule. There aer besides jute and cotton mills in India. Roads and railways have stimulated commerce, population has been doubled owing to universal peace in the country. Large works of canals, bunds (dams or dykes) and bridges, &c., are always in progress and are diminishing the danger of (occasional) famines in future. Local self-Government has been established and people have also got their representation into the Legislative Councils. Western education is making great changes in popular prejudices and customs; and freedom of the Press and liberty to express their own views at (public) meetings having been granted the people are fully enjoying the liberty of thought. The revenue of the Government of India which was twenty-one crores in 1837 has now reached nearly ninety-seven crores, and the English language has furnished (us) with a great means for the interchange of thoughts between all the (different) people of India. In short to sum up the whole, two or four (*i.e.*, a few) large provinces have been added to the British empire in India during the last sixty years; population is doubled; commerce has increased ninefold and Government revenue nearly five times. Besides, India has

been in continuous enjoyment of railway, telegraph and other appliances of western civilization and especially of peace; what more progress can be accomplished in sixty years by a country like this?

True; but on closer consideration any one will see from these figures that the state of India has not improved. It is to dispel the wrong impression produced by these figures that the Indian National Congress has been working for the last twelve years, and the evidence given before the Welby Commission on behalf of the Congress and especially the evidence of Mr. Dadabhai Naoroji has satisfactorily shown how India is gradually becoming impoverished and helpless under the British rule. Breaches of peace did sometimes take place during our native rule, but the kind of courage and self-reliance which was kept up by these amongst the people has now entirely disappeared. It is true that Indian commerce was very insignificant before, but that means that all the articles needed by us were manufactured by us here, and the best products of local artizans were exported to foreign countries. Things have undergone a complete change during the last sixty years, and matters have now come to such a pass that we send agricultural produce to England and take in English manufactures. It is simply a delusion that our trade has increased. Let us suppose that a man had formerly an income of one hundred rupees and expenditure of fifty rupees so as to make up a total account of one hundred and fifty rupees, but that the same man has now an income of rupees five hundred and expenditure of eight hundred rupees, thereby having to keep up an account of rupees thirteen hundred. Has his wealth increased or lessened thereby? Of course it must be said that it is lessened, and the same is the case with India. Whatever be the increase in Indian commerce, it must not be forgotten that we lose in it thirty-four crores of rupees annually. Appliances like railways, telegraph, and roads have increased, but all this is like decorating another's wife. Not only do they not belong to us, but we have to suffer annually a heavy loss for interest (and) exchange(*a*) on their account. It is true that a country becomes rich by means of railways and telegraphs; but which? Certainly that which constructs its own railway. Take for instance Japan. Why is it that India has not prospered during the sixty years' reign of Her Majesty as much as Japan has done during the last thirty years? The rulers of Japan are not wiser than our rulers, nor are the people of Japan more intelligent or hardy than ourselves. Only Japan is self-Government, so that any improvement that takes place there is made solely for the benefit and happiness of the people of that country, while on our side in anything that is undertaken the cream goes to Europeans, while the whey remains to us. India will never prosper in this way. Anybody can now easily form an idea to what poverty India is reduced by noticing how one year's drought drives lakhs of people to starvation. The Europeans having detained in their hands all the different (principal) posts in the civil and military departments requiring (the exercise) of power (or authority) and skill, all intelligence and capability in us are decaying; peace has proved an incentive to over-population; the subject population having been disarmed have not been able to retain even the capacity of self-defence. Old industries and arts have almost died out; the little education that is given is quite unsubstantial and one-sided; military and technical education amounts to a big zero; administrative expenditure is growing out of all proportions so as to become an unbearable burden to the people. Formerly money-lenders alone used to

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(*a*) The text is Manoti which means a premium or bonus to a money-lender above the stipulated interest.

tease the ryots; now both the money-lender and the Government equally trouble the cultivators, while no industry has survived except the agricultural. As regards the Native States they also are being humiliated at every step and have fallen from the rank of allies of the British Government to the portion of subjugated people ; and none appears to possess any sort of energy or vigour. In brief, the country which had some activity a hundred years ago, has now become completely helpless and poor. This year especially famine, plague and earthquake have reduced the people to the last extremities. To speak the truth, none can help thinking that this is surely not the time for celebrating the Jubilee at least in India. It is true that we poor subjects ought also to glorify (*i.e.*, to celebrate the Jubilee of) our Queen-Empress ; but when ? When there is some plenty. The orders of the Government of India are also somewhat of the same kind, but it is not advisable that owing to the excessive zeal of the subordinate officers, the necessary burden should be cast upon the people in some places. We do not require anybody to teach us that subject people should always pray for the welfare of (their) sovereigns as a duty owed by them to their rulers ; but on the other hand like subjects, rulers also have a duty towards their subjects, and in consequence of this (duty) not being properly discharged, we have unfortunately not been able to make that progress in sixty years under the rule of our wise rulers, as our neighbour Japan attained in the (last) thirty years. Hence, on behalf of the people of India, we pray to Her Majesty Queen-Empress Victoria that she should place her Indian subjects on the road to prosperity by giving them some more rights on the occasion of this great festival. The British Empire is vast, and we are very glad and willing to live under the British rule, but then, of course, to whatever part of the empire we go, we must have the same rights as those of Her Majesty's other subjects. If all of us are children of Her Majesty the Queen, we do not understand why the children in one part should be unfortunate and poor, and why those in other parts should be rich and insolent. We are even being prevented from going into the British Colonies ; so long as this distinction lasts, the British Empire will never be laid on a sound basis. That Her Majesty the Queen approves of this principle, is evidenced by her Proclamation of 1858. Hence, if after seeing how far the principles of the Proclamation have been carried out in forty years, Her Majesty the Queen graciously orders a full execution of them on the occasion of this great festival, not only will she have the credit of laying the foundation of the prosperity of thirty crores of people, but the British Empire will thereby gain more strength and permanency. May God grant (this) and inspire the Queen (Empress) Victoria with such a desire on the occasion of this great festival, and may Her Majesty be spared to carry it out with her own hand is the prayer of us all. If India has any hope, it is this only, and we pray to God that He may grant long life to the Queen (Empress) Victoria and she herself should fulfil our desire.

A true translation.

(Sd.) N. L. MANKAR,

6th Translator.

H. I. M.'s High Court, Bombay,

Translator's Office, 1st *September* 1897.

No. 27.

शिवाजीचे उद्गार.

SIVAJICHE UDGARA.

OF SIVAJI UTTERANCES.

SHIVAJI'S UTTERANCES.

(१) दुष्टां संहरुनी बहूत भुविंचा तो भार केला कमी ।
(1) Dushṭan sanharuní bahúta bhuvinchá to bhára kelá kami
the wicked having destroyed greatly of *the* earth the burden did less
annihilated great terraqueous globe weight

Having destroyed the wicked (I) greatly lessened the burden of the earth
By annihilating the wicked I lightened the great weight on the terraqueous globe

(२) देशा उद्धरिलें स्वराज्य करुनी तारोनि धर्मास मी ॥
(2) Deśâ uddharilen Svarâjya karunî târoni dharmâsa mî
(the) country rescued my kingdom *by* establishing *by* saving religion I
delivered

I rescued the country by establishing my kingdom and saving religion
I delivered the country by establishing svarajya (and) by saving religion

(३) झाला शीण बहू तया दवडण्या स्वर्लोक म्यां गांठिला ।
(3) Zálá sína bahú tayá davaḍanyá svarloka myán gánṭhilár
became fatigue great it for driving heavenly world, I betook to
exhaustion away, throwing heaven (1)
away

Great fatigue overtook me to drive which I betook myself to the heavenly world
I betook myself to heaven to skake off the great exhaustion which had come upon me.

(४) होतों निद्रित तों तुम्हीं उठविलें कां लाडक्यांनों मला ॥
(4) Hoten nidrita ton tumhin uṭhavlen kán ládakyánon malá
was sleeping *mean*while; you awakened why dear ones me

I was sleeping then. Why, O dear ones! did then you in the meanwhile awaken me
I was asleep; why then, did you (my) darlings, awaken me?

(५) पायाशुद्ध उदात्त नीति रणिंचें तें शौर्य कर्णा सम ।
(5) Páyáśuddha udátta niti ranichen ten śáurya Karṇá sama
foundation-correct high, morality of the battle-field that valour Karṇá like
strong sublime policy

Well-founded high morality that valour on the battle-field like Karna.
sublime policy, based on a strong foundation, valor in the battle-field like that of Karna

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(1) *Vide* Monier Williams' Sanskrit-English Dictionary, page 1160, column 2.

(६)	देशाचा	अभिमान	धाडस	खरें	तें	ऐक्य	सर्वोत्तम ॥
(6)	Deśáchá	abhimána	dhaḍása	kharen	ten	aikya	sarvottama
	of country	pride	enterprise	true	that,	unity	best of all
			dauntlessness	*genuine*	*the*		

Pride of (one's) country, true enterprise, that excellent unity.

Patriotism, genuine dauntlessness, unity the best of all.

(७)	ऐसे	सद्गुण	कल्पवृक्षाचि	जणूं	भूमींत	या	लाविले ।
(7)	Aise	sadguṇ	kalpavṛikshachi	jaṇun	bhúmínta	yá	lávilè
	Such	good qualities,	wish-fulfilling trees	as if	in land	this	planted
		virtues	*kalpavriksha (trees)*		*upon soil*		

Such qualities were planted in this land as if (so many) wish-fulfilling trees.

I had planted upon thi s soil these virtues that may be likened to the kalpavriksha.

(८)	त्यांचीं	दावितसाल	काय	मजसीं	तीं	गोड	आतां	फळें ॥
(8)	Tyánchí	dávitasála	kàya	majaśín	tin	goḍa	átán	phaḷen
	their	you would be showing	why	to me	those	sweet	now	fruits.
		perhaps you wish to show						

I (hoped) you would show me now the sweet fruits of these.

Perhaps you wish to show me the delicious fruits of these.

(९)	अरेरे!	हें	काई!	दिसत	पडला	मोडुन	गड ।
(9)	Arèrè!	hèn	káí!	disata	paḍalá	moḍuna	gaḍa
	Alas!	this	what!	appears	fallen	having crumbled	fort
				(I) see			

Alas! what (is) this! the fort appears to be crumbled down.

Alas! what is this; (I) see a fort has crumbled down.

(१०)	नशीबें	बैसाया	मिळत	मज	विच्छिन्न	दगड ॥
(10)	Naśiben	baisáyá	miḷata	maja	vichhinna	dagaḍa
	by fate	to sit	is available,	to me	broken	stone
	fortune		*get*			

By fate I get a broken stone to sit upon.

Through (mis) fortune I get a broken stone to sit upon.

(११)	तसें	कां	जाईना	हृदय	मम	हें	आज	फुटुनी ।
(11)	Tasen	kán	jáíná	hṛidaya	mama	hèn	ája	phuṭuní
	In the same manner	why	not go	heart	mine	this	to-day	having broken
	like that						*this day*	

Why does not this heart of mine break to-day in the same way?

(Then) why does not my heart break like that this day?

(१२)	पहातों	देशाचा	शिवशिव	अतां	नाश	नयनीं ! ॥
(12)	Paháton	deśáchá	śiva, śiva,	atán	náśa	nayanin !
	I see	of the country	shiv, shiv, exclamation of grief,	now	ruin	with eyes
			alas, alas,			

Oh, Shiv, Shiv, I see now with (my) eyes the ruin of the country!

Alas! Alas! I now see with (my own) eyes the ruin of (my) country!

(१३)	पैसा	पाउससा	अहो	खरचिला	बांधावयातें	जयां ।
(13)	Paisá	páusasá	aho	kharachilá	bándhávayátè	jayán
	Money	like rain	O	spent *expended*	to build	which

O to build which (I) spent money like rain.
to build which (I) expended money like rain.

(१४)	ताजें	तापट	रक्त	जेथ	गळलें	संपादण्यातें	जया ॥
(14)	Tájen	tápaṭa	rakta	jetha	galalèn	sampádaṇyátèn	jayá
	Fresh	hot	blood	where	spilt	to acquire	which

(And) where to acquire which fresh hot blood was spilt.
to acquire which fresh (and) fiery blood was spilt there.

(१५)	गेलों	चालुन	जेथुनी	दरींतुनी	गर्जोनियां	सिंहसा ।
(15)	Gelon	cháluna	jethuní	darintuní	garjoniyán	sinhasá
	Went	attacking	whence	through valleys *ravines*	roaring	like lion

From which I issued forth attacking through the valleys roaring like a lion.
From which I sallied forth, roaring like a lion, through the ravines.

(१६)	किल्ले	ते	मम	ढासळून	पडले	विध्वंस	हा	कायसा ! ॥
(16)	Kille	te	mama	dhásaḷúna	paḍale	vidhvansa	há	káyasá!
	Forts	these	mine	toppling down *crumbled down*	fell	ruin	this	what like !

These forts of mine have toppled down. What ruin is this!
Those forts of mine have crumbled down ; what a desolation is this !

(१७)	लक्ष्मीतें	जुलुमें	परस्थ	छळुनी	नेती	करें	ओढुनी ।
(17)	Lakshmíten	julumen	parastha	chhaluní	netí	karen	oḍhuní
	To Lakshmi (goddess of wealth)	forcibly *violently*	foreigners	teasingly, *by persecution*	carry	by the *by taxes*	hand dragging

The foreigners teasingly (and) forcibly drag away Lakshmi by the hand.
Foreigners are dragging out Lakshmi violently by the hand by (means of) persecution.

(१८)	गेली	ती	पळुनी	सवें	विपुलता	आरोग्य	ही	मागुनी ॥
(18)	Geli	tí	paluni	saven	vipulatá	árogya	hí	máguní
	Gone	her	running	with	plenty	health	also	after

With her plenty has run away (and) health has followed.
Along with her plenty has fled (and) after (that) health also.

(१९)	दुर्भिक्षासह	सर्व	देश	फिरते	ही	दुष्ट	आकाबया ।
(19)	Durbhikshásaha	sarva	deśa	phirate	hi	dushṭa	ákábayá
	With scarcity, *famine*	whole	country	roams	this	cruel *wicked*	adversity, *misfortune*

This cruel adversity roams over the whole country with scarcity.
This wicked Akabaya stalks with famine through the whole country.

(२०) रोगांची पसरोन सांथ विचरे मृत्यू न ज्यातें दया ॥
(20) Rogánchí pasarona santha vichare mrityú na jyáten dayá
Of diseases spreading epidemic stalks through death no to whom mercy
moves about

Merciless death stalks through (the land) spreading epidemic diseases.
Relentless death moves about spreading epidemics of diseases.

श्लोक.

SHLOKA (*Metre*).

VERSES.

(२१) माझा घर्म पडे तया क्षणिं तिथें तें रक्त ज्याचें गळे ।
(21) Májhá gharma pade tayá kshanin títhen ten rakta jyáchen galen
My sweat fell at that moment there that blood whose dropped
perspiration *promptly* *on the spot*

Those whose blood dropped instantly where my sweat fell.
Who promptly shed their blood on the spot where my perspiration fell.

(२२) माझे जीव दुजे धुरंधर वदा ते हो कुठे मावळे! ॥
(22) Májhe jiva duje dhurandhara vadá te ho kuṭhe mávaḷe
My life second expert say they O where Mavae
lives *splendid*

Say, where are those expert Mavlas (who were) my second life !
Say, ye, where are those splendid Mávlás my second lives.

(२३) खाती भाकर एक वेळ परि त्यां तीही पडेना पुरी
(23) Khátí bhákara eka veḷa pari tyan tíhí padená purí
Eat bread one time but them even that does not suffice

They eat bread (only) once, but that, too, does not suffice them !
They eat bread once (in a day) but not enough of that even.

(२४) कष्टें काल कठीण कंठिति घड्या बांधोनि पोटावरी ।
(24) Kashṭen kála kaṭhiṇa kanṭhiti ghadyá bándhoni poṭávarí
with difficulty time hard pass on folds tying on belly
toil through (2)

They pass on hard times with difficulty by tying folds of cloth on their bellies.
They toil through hard times, by tying up their stomachs (to appease the pangs of hunger.)

(२५) शांतीच्या समयीं स्वधर्म अपुला पाळोन जे राहिले ।
(25) Śántichyá samayín svadharma apulâ páḷona je rábile
of peace in time one's religion own preserving who lived
abiding by

(Those) who in time of peace lived preserving their own religion.
Who (while they) abided by their own religion in times of peace.

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(2) Vide Molesworth, p. 127, col. 2

(२६)	त्यागोनी	समयास	दर्भ	करिंचे	शस्त्रां	करीं	वाहिलें।
(26)	Tyágoni	samayása	darbha	karinchen	shastrán	karín	váhile
	Having abandoned	at times	darbha	in hand	weapons	in hand	took
	Forsaken	*when occasion required*			*arms*		

At times having abandoned darbha in hand took weapons in hand.

Forsook the darbha in (their) hands for arms which they bore when occasion required.

(२७)	माझे	सद्गुरु	धर्मशिक्षक	जना	ज्या	ब्राह्मणां	पाळिलें।
(27)	Mâze	sadguru	dharmaśikshaka	janân	jya	brâhmaṇân	pâḷilen
	Mine	good preceptors	religion-teachers	people	whom	Brahmins	protected
	My						

Those Brahmins (who where) my good preceptors (and) teachers of religion (and) whom I protected.

Those good preceptors, (those) religious teachers of mine, the **Brahmans** *whom I protected.*

(२८)	त्यांतें	कैद	घडोनिया	जन	तुम्हीं	क्षेत्रीं	कसें	साहिलें।
(28)	Tâynten	kaida	ghadonyâ	jana	tumhîn	kshetrín	kasen	sâhilen
	To them	imprisonment	having happened	people	you	in a sacred place	how(3)	endured
								(3) *bore*
								(3) *tolerated*

To them imprisonment having been awarded in a sacred place, O people ! how you endured it !

O people, how did you tolerate in the kshetra, incarceration of those.

(२९)	धात्रीभूत	लहानग्यांस	जननी	सोडून	जाते	यदा
(29)	Dhâtríbhûta	lâhânagyânsa	jananí	sodúna	jâte	yádâ
	Is foster-mother	to children	mother	leaving	goes	when
		of babes				

(Who) is foster-mother to children when (their natural) mother leaves (them)

The foster-mother of babes when (their) mother leaves (them behind)

(३०)	मूलाधार	कृषिवलां	बहु	असे	लोकांस	जी	शक्तिदा।
(30)	Múlàdhâra	krisívalân	bahu	ase	lokânsa	jí	śaktidâ
	Main support	to agriculturists	great	is	to people		strength-giving
	Mainstay		*many*			*who*	

Who is the main support of the cultivators (and) the great strength-giver of the people.

The mainstay of the agriculturists, the imparter of strength to many people.

(३१)	माझी	माय	म्हणोन	गाय	पुजिली	प्राणांहुनी	रक्षुनी।
(31)	mâjhí	mâya	mhanona	gâya	pujilí	práṇânhuni	rakshuní
	my	mother	thinking	cow	worshipped	beyond life	protected
			as			*more than life*	

The cow whom protecting beyond (my) life I worshipped as if (she was) my mother.

The cow which I worshipped as my mother and protected more than (my) life.

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(3) *Vide* Molesworth, p. 852, col. 3; for tolerate, see p. 354, Webster's Smaller Dictionary Ed. 1852, under endure.

(३२)	तीतें	रोज	चराचरा	चिरिती	वध्यस्थलीं	नेउनी
(32)	Titen	roja	charâchara	chiriti	vadhyasthalîn	neunî
	to her	daily	(imitative of the sound of *a violent rending, tearing or cutting) recklessly* (4)	cut	slaughter-house	carrying

She is daily carried to the slaughter-house and slaughtered recklessly.
She is taken daily to the slaughter-house and ruthlessly slaughtered (there).

(३३)	"आला	धांवत	नेमका	अपणची	नेमांत	बंदूकिच्या !"।
(33)	" Âlâ	dhânvata	nemakâ	âpaṇachî	nemanta	bandûkichya'
	came	running	exactly	of himself *himself*	within	the range of the gun.''

"(He,) of himself, came running exactly within the range of the gun."
" He himself came running exactly within the line of fire of (my) gun !"

(३४)	"मातें	अस्वल	वाटला" !	"सुजाति	हो	यांच्या	प्लिहा रोजच्या!" ।।
(34)	" mâten	asvala	vâtalâ "!	" sujati	ho	yãnchyâ	plîha rojachyâ !"
	to me	bear	appeared *thought*	enlarged	O	theirs	spleen daily (always)

"(He) appeared a bear to me!" " O ! their spleens are daily enlarged!"
" I thought (him to be) a bear !" " Their spleens are daily enlarged !"

(३५)	गोरा	लोक	सुटे	निरर्थ	सबबी	सांगोनियां	या	कसा ।
(35)	gorâ	loka	sute	nirartha	sababî	sângoniyân	yâ	kasâ
	white	men	escape	groundless *meaningless*	excuses *pleas*	having told *by urging*	these	how

How white men escape having pleaded groundless excuses like these.
How do the white men escape by urging these meaningless pleas !

(३६)	न्यायाच्या	अजि	मंदिरीं	दिसतसे	अन्याय	हा	फारसा ! ।।
(36)	Nyâyâchyâ	aji	mandirín	disatase	anyâya	hâ	pharasâ !
	of justice	now *Nowadays in these days*	in the temples *in the tribunals*	appears *seems*	injustice	this	great like *great*

Now there appears this great injustice in the temples of justice.
This great injustice seems (to prevail) in these days in the tribunals of justice.

(३७)	होती	काय	बिशाद	वक्रनयनें	पाही	परस्त्री	कुणी ।
(37)	hotî	kâya	biśâda	vakranayanen	pâhî	parastrî	kuṇí
	was	what	significance ; *competency capacity* (5)	with improper eye	to see	another's wife	any one

What was the significance, if any one could look with improper eyes at another's wife ?
Could any man have dared to cast an improper glance at the wife of another?

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(4) *Vide* Molesworth, p. 273, col. 3.

(5) *Vide* Molesworth, page 554, col. 3, under माज्ञा referred to under किमत. which is referred to under बिशाद.

The first three words in the line form an idiom which conveys the idea expressed in the official translation. See under

(३८) म्यानांतून हजार तीक्ष्ण असिका बाहेर ये त्याक्षणीं ॥
(38) Myânântûna hajâra tikshṇa asikâ bâhera ye tya-kshaṇin
From the scabbards a thousand sharp swords out *would* come that moment

That moment thousand sharp swords came out of the scabbards.

A thousand sharp swords would have leapt out of (their) scabbards instantly.

(३९) आतां अग्निरथांत संधि बघुनी हस्तें स्त्रियां ओढिती ।
(39) átân agnirathânta sandhi baghunî hasten striyân oḍhitî
now in railway carriages opportunity seeing by hand women drag

Now seeing an opportunity women are dragged by the hand in railway carriages.

Now, (however) opportunities are availed of in railway carriages and women are dragged by the hand.

(४०) षण्ढांनों करितां कसें सहन हें! लावून घ्या दाद ती ॥
(40) shaṇḍhânon karitân kasèn sahana hèn! lâvûna ghyâ dâda tí !
O eunuchs (*cowards*) 6 do how endure *brook* this get (7) a representation of injury that
yet that grievance redressed redress of grievances

O cowards! how you endure it! Get that grievance redressed! (or get a representation of that injury made!)

O eunuchs ! how do you brook this ! Get that redressed ! (7).

(४१) "वेडा हा उचलोन यास जलदी यात्रेस द्या लावुनी"।
(41) Vadâ hâ uchalona yasa jaladî yâtresa dyâ lâounî
mad he lifting up him quickly to pilgrimage give sending

He is mad, lift him and send him quickly on a pilgrimage.

"*He is mad, lift him up and send him atonce on a pilgrimage.*"

(४२) "चैनी तो अधिकार घ्या मुदतिनें घेतों असें सांगुनी"॥
(42) Chaini to adhikâra ghyâ mudatinen gheton asén sânguní
pleasure-seeking. he power take temporarily take such telling

"That (other) is pleasure-seeking, take (his) powers telling that they are taken away temporarily."

"*He is fond of pleasure. Deprive him of his powers saying that it would be for a time only.*"

(४३) ऐशीं हातळतीं अतां नृपकुलें दुर्दैव हें ओढलें ।
(43) Aisîn hâtaḷati atân nṛipa kulen durdaiva hen odhalen
thus handled now families of chiefs *Royal families* misfortune this has come

Now families of chiefs are thus handled, the misfortune has fallen (upon us).

This is the way in which Royal families are being handled now. What misfortune has overtaken (the land)!

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(6) The word eunuchs may perhaps be considered derivatively to mean "cowards."

(7) The last four words in the line which are thus translated—"Get that redressed"—are an idiom which, amplified, mean "Get that redressed" by making a representation of that grievance to higher authority. The word "dada" generally means a representation of grievances made by a political inferior to a political superior.

(४४) सारे केवळ हे दळ्ये बुदबळ्ये राजे कसे जाहले ! ॥
(44) Sâre keval he dalye budabalye râje kase jâhale !
All only these womanish pertaining to chiefs how became
quite *effeminate* chess-board
How all these chiefs have become only womanish like (kings) on chess-board !
How have all these kings become quite effeminate like those on the chess-board !

(४५) देखावा हृदया विदारिल असा पाहूं तरी मी कसा ? ॥
(45) Dehkâvâ hridayâ vidârila asâ pâhun tarí mí kasá?
Sight heart will rend such see even, at all I how
How can I at all see such a heart-rending sight?
How can I bear to see this heart-rending sight?

(४६) नेत्रों दृष्टि दुजेकडे, कथुनियां संदेश बारीकसा ॥
(46) Nèton drishti dujèkadè kathuniyân sandèśa bárikasâ
Take away, sight to another, having told message short-like,
turn *glance* *in another direction* *brief*
I turn (my) sight towards another (place) after having told a short message.
I turn (my) glance in another direction, after telling (i. e, leaving with you) a brief message.

(४७) ज्यांच्या मावळतो कधीं न रवि हा राज्यावरी थोरल्या ।
(47) Jyânchyâ mâvalatô kadhín na ravi hâ râjyâvarí thoralyâ
Whose sets ever not sun this over-kingdom, vast
dominions
Over whose vast kingdom the sun never sets.
Over whose vast dominions the sun never sets.

(४८) सांगा त्या प्रभुनां सलाम तुमच्या दोस्तांस माझ्या भल्या !
(48) Sângâ tyâ prabhunân salâma tumachyâ dostânsa májhyá bhalyâ
Tell (give) those rulers compliments your friends my good
Give (my) compliments to those rulers, who are (also) my good friends.
Give (my) compliments to my good friends, your rulers.

(४९) सांगा त्यांस "अहो तुम्ही विसरलां कैशी जुनी रीत ती" ।
(49) Sângâ tyánsa "aho tumhí visaralân kaiśí juní rita tí"
Tell them O you forgot how old way that
Tell them "O! how you forgot that old way (of yours)."
Tell them "How have you forgotten that old way (of yours)."

(५०) जेव्हां घेउनियां तुला, करितसां विक्री वखारींत ती ! ॥
(50) Jevhân gheuniyân tulâ karitasân vikrí vakharínta tí
When having taken scales made, sale in warehouse that
used to make
When taking scales you made sales in the warehouse !
When with scales in hand, you use to sell (your goods) in (your) warehouses!

(५१) होत्या होत बऱ्याच वेळ सफरी बाजूस माझ्या तया !
(51) Hotyâ hota baryâcha vela saphari bâjûsa mâjhyâ tayâ
Were being done several times expeditions to side direction my that
Several expeditions of mine were being undertaken in that directon.
(As) my expeditions in that direction were frequent.

(५२)	होतें	शक्य	तदा	फिरूनही	तुम्हा	देशास	लावावया ! ||
(52)	Hotén	sákya	tadá	phírûnahî	tumhá	desâsa	lâvâvayâ !
	Was	possible	then	again, *back*	you	to the country	despatch *send off, drive*

It was possible then to send you back to (your) country.
It was at that time possible (for me) to drive you back to (your own) country!

(५३)	हिंदूचें	परि	शील	थोर	म्हणुनी	तुह्मांस	म्यां	रक्षिलें।
(53)	Hindûchen	pari	sîla	thora	mhanuní	tuhmânsa	myân	rakshilên
	Of Hindu	but, *however*	nature	magnanimous	therefore	you	I	protected

But I protected you because the Hindu is magnanimous by nature.
The Hindus, however, being magnanimous by nature, I protected you.

(५४)	नाहीं	का	उपकार	थोर	तुमच्या	माथीं	असे	जाहले, ||
54)	Nâhin	ká	upakâra	thora	tumachyâ	máthîn	asé	jâhalé
	Not	why	obligations	great *deep*	your	on head	thus	became

Have not you (your heads) thus been laid under great obligations.
Have you not thus been laid under deep obligations.

(५५)	द्या,	द्या,	सुख	तरी	प्रजेस	आपुल्या	माझीं	च	तीं	लेंकरें।
(55)	Dyá	dyá	sûkha	tari	prajesa	apulyá	májhin	cha	tîn	lenkaren
	Give	give	happiness	therefore *then*	subjects	yours	my	own	they	children.

Therefore give, do give happiness to your subjects. They are my own children
Make, then, your subjects who are my own children, happy.

(५६)	व्हावें	आज	कृतज्ञ	फेडुन	ऋणा	हें	लौकिकाला	बरें ! ||
(56)	Vhâven	àja	kritajna	pheduna	riná	hen	láukikâlá	baren
	Should	to-day	grateful	redeeming *discharging*	debt	this	for reputation	good

You should be grateful by redeeming the debt to-day. It would be good for (your) reputation.

It will be good for (your) reputation if you show your gratitude now by discharging (this) debt (of obligation).

निशाणी भवानी तलवार.

NIŚÁNÍ BHAWANÎ TALAVARA

MARK BHAWANI SWORD.

Mark (of) *the Bháwani sword.*

*Exhibit B 1—transliterated and translated word for word as amended in red ink * by me.*

(Sd.) N. L. MANKAR,

Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, 8*th September* 1897.

M. 123.

* Words in red ink are printed in Italics.

(TRANSLATION OF SHIVAJI'S UTTERANCES.)

(Literal Translation.)	(Official Translation.)
1. Having[1] destroyed[2] the wicked, I greatly lessened[3] the burden[4] of *the* earth,[5]	(1) By[1] annihilating[2] the wicked I lightened[3] the great weight[4] on the terraqueous globe[5].
2. I rescued[6] the country by establishing my kingdom[7] (and) saving[8] religion,	(2) I delivered[6] the country by establishing swarajya (*a*)[7] (and) by saving[8] religion.
3. Great fatigue[12] overtook[13] me, to drive[11] which I betook myself to the heavenly world[10]	(3) I betook myself to heaven[10] (*b*) to shake off[11] the great exhaustion[12] which had come upon me[13].
4. *I was asleep.* Why, O dear ones[14]! *did* you *in the meanwhile* awaken me.	(4) I was asleep, why then did you, (my) darlings[14], awaken me?
5. Well-founded[19] high morality,[18] that valour on the *battle* field like Karna,	(5—8) I had planted upon this soil[15] the virtues,[16] that may be likened to the Kalpa-vriksha[17] (*c*) of sublime policy[18] (*cc*) based on a strong foundation[19] valour in the battle-field like that of Karna (*d*), patriotism, genuine[20] dauntlessness[21] (and) unity the best of all[22]. Perhaps you[23] now wish to show me[24] the delicious fruits[25] of these.
6. Pride of (one's) country,[20] true enterprise,[21] that excellent unity,[22]	
7. Such qualities[16] were planted in this land,[15] as if (so many) wish-fulfilling trees;[17]	
8. (I hoped)[23] you would show me now[24] the sweet fruits[25] of these.	
9. Alas! What (is) this! The fort appears to be[26] crumbled down,	(9) Alas! What (is) this! (I) see a fort has[26] crumbled down.
10. By fate[27] I get a broken stone[28] to sit upon.	(10) Through (mis) fortune[27] I get a broken stone[28] to sit upon.
11. Why does not this heart of mine[30] break to-day[31] in the same way[32].	(11) (Then) why does not my heart[30] break like that this day?

(*a*) Literally, one's own Government, native rule.
(*b*) The text of heaven literally means the paradise of Indra.
(*c*) One of the five trees of Indra's heaven which yields whatever may be desired.
(*cc*) May also mean morality.
(*d*) The name of the half-brother to the Pandav Princes, famed for munificence.

12. O Shiv, Shiv ! [33] I see now with (my) eyes the ruin of the country. [35]

13. O ! to build which (I) spent money [36] like rain,

14. (And) *where*, to acquire which fresh hot [37] blood was spilt, [38]

15. From which I issued [39] forth *attacking* through the valleys [40] roaring like a lioy

16. Those forts of mine have topple [41] down ! What ruin [42] is this !

17. The foreigners teasingly [45] (and forcibly [44] drag away [43] Lakshmi by the hand

18. With her, Plenty has run awan [46] and) health has followed, [47]

19. This cruel [48] adversity roams [49] over the whole country with scarcity, [50]

20. Merciless [51] Death stalks through [52] (the land) spreading epidemic diseases.

21. Those whose blood dropped instantly [54] where my sweat [55] fell,

22. Say where are those expert [53] Mavalas (who were) my second life,

23. They eat bread (only) once, but ,that too does not suffice them, [56]

24. They pass [57] on hard times with difficulty [57] by tying folds (of cloth) [58] on their bellies. [59]

(12) Alas! Alas! [33] I now see with (my own) [34] eyes the ruin of (my) [35] country.

(13—16) Those forts of mine to build which (I) expended [36] money like rain, to sacquire which fresh (and) fiery [37] blood was pilled [38] there, from which I sallied [39] forth roaring like a lion through the ravines, [40] have crumbled [41] down ; what a desolation [42] is this !

(17) Foreigners are dragging out [43] Lakhsmi (*e*) violently [44] by the hand (*f*) by (means of) persecution. (*f*) [45]

(18) Along with her Plenty has fled (and) [46] after (that) [47] health also.

(19) This wicked Akábayá (*g*) [48] stalks [49] with famine [50] through the whole country.

(20) Relentless [51] death moves about [52] spreading epidemics of diseases.

(21—24) Say he, where are those splendid [53] Mavlas, my second lives, (*h*) who promptly [54] shed their blood on the spot where my perspiration [55] fell ? They eat bread once (*i*) (in a day) but not enough of that even. [56] They toil [57] through hard times by tying up [58] their stomachs [59] (to appease the pang of hunger.)

(*e*) The Goddess of wealth.

(*f*) There being a pun upon the word "Kara," which means both 'the hand' and 'taxes,' the second meaning of this sentence may be got at by substituting "by (levying) taxes" for "by the hand."

(*g*) The elder sister of fortune, Misfortune personified.

(*h*) Second lives, *i.e.*, "beloved."

(*i*) Meaning, they take only one meal a day.

25. (Those) who in time of peace lived preserving their own religion [53].

26. At times [66] having abandoned [64] Darbha in hand took weapons [65] in hand,

27. Those Brahmins (who were) my good preceptors (and) teachers of religion (and) whom I protected,

28. To them imprisonment [62] having been awarded (1) in a sacred place [61], O people! how you endured it [60]!

29. (Who) is foster-mother to children [67] when their (natural) mother leaves (them).

30. Who is the main support [68] of the cultivators [69] (and) the great strength-giver of the people?

31. The cow whom protecting beyond (my) life I worshipped as if (she was) my mother.

32. She is daily carried [70] to the slaughter-house and slaughtered [7] *recklessly*. (2)

33. "(He), of himself, came running exactly within the range of the gun [72]."

34. "(He) appeared a bear to me!" "O! their spleens are daily enlarged, !"

35. How white men escape having pleaded [73] groundless [74] excuses [75] like these,

36. Now there appears [76] *this great* injustice in the temples [77] of justice.

37. What was the significance [78] if any one could look [79] with improper eyes [80] at another's wife?

(25—28) Oh people! how did you tolerate [60], (1) in the Kshetra [61], (*j*) incarceration [62] of those good preceptors, (those) religious teachers of mine, the Brahmins whom I protected (and) who, (while they) abided [63] by their own religion in times of peace forsook [64] the Darbha (*k*) in (their) hands for arms [5] which they bore when occasion [66] required.

(29—32) The cow, the foster-mother of babes [67] when (their) mother leaves (them behind) the mainstay [68] of the agriculturists [69], the imparter of strength to many people, which I worshipped as my mother and protected more than (my) life is taken [70] daily to the slaughter-house and ruthlessly slaughtered [71] (2) (there).

33. "He himself came running exactly within the line of fire of (my) gun [72]!"

34. "I thought him to be a bear!" "Their spleens are daily enlarged!"

35. How do the white men escape by urging [73] these meaningless [74] pleas [75]!

36. This great injustice seems (to prevail) [76] in these days in the tribunals [77] of justice.

37. Could any man have dared [78] to cast [79] an improper glance [80] (*l*) at the wife of another.

(*j*) A sacred place, presumably an allusion to the Wai Kshetra.

(*k*) A sacred grass used in sacrifices, &c.

(1) *See note 3 on page 4.*

(*l*) The text of these words literally means 'oblique vision.'

(2) *See note 4 on page 5.*

38. That moment[82] a thousand sharp swords (would) come[81] out of the scabbards.

39. Now seeing an opportunity[83] women are dragged by the hand in railway carriages.

40. O cowards[84]! (3) How you endure[85] it! *Get that grievance redressed[86]? or (make a representation of that injury?)*

41. "He is mad, lift him and send him *quickly on* a pilgrimage"

42. "That (other) is pleasure-seeking[87] take[88] his powers, telling[89] that they are taken away temporarily[90]."

43. Now families of chiefs are thus handled; the misfortune[91] has fallen (upon us).

44. How all *these* chiefs[92] have become only womanish[93] like (kings) on chess-board!

45. How can I at all see[94] such a heart-rending sight?

46. I turn (my) sight[95] towards another (place)[96] after having[97] told a short[98] message.

47. Over whose vast kingdom[100] the sun never sets.

48. Give (my) compliments to those[99] rulers, who are (also) my good friends.

49. Tell them "O how you forgot that old way (of yours)."

50. When taking scales you made sales in the warehouse!

51. Several[10] expeditions of mine were being undertaken in that direction!

52. It was possible then[101] to *send* you[102] *back* to (your) country.

38. A thousand sharp swords (would have) leapt out[81] of (their) scabbards instantly[82],

39. Now, (however), opportunities are availed[83] of in railway carriages and women are dragged by the hand.

40. O eunuchs[84]! (3) how do you brook[85] this? Get that redressed[86]! (3)

41. "He is mad. Lift him up and send him at once on a pilgrimage."

42. "He is fond of pleasure[87]. Deprive[88] him of his powers, saying[89] that it would be for a time[90] only."

43. This is the way in which royal families are being handled now. What misfortune has overtaken (the land)[91]!

44. How have all these kings become[92] quite effeminate[93], like those on the chess-board!

45—48. How can I bear to see[94] this heart-rending sight! I turn (my) glance[95] in another direction[96] after telling[97] (*i.e.*, leaving with you) a brief message[98]. Give (my) compliments to my good friends your[99] rulers, over whose vast dominions[100] the sun never sets!

49. Tell them, "how have you forgotten that old way (of yours)."

50. When with scales in hand you *used to sell* (your goods)[?] in (your) warehouses.

51. (As) my expeditions in that direction were frequent[100].

52. It was at that time[101] possible (for me) to drive you[102] back to (your own country)!

(3) *See notes* (6) *and* (7) *on page* 6.

53. But I protected you because the Hindu is magnanimous by nature,

54. Have not you (your heads) thus been laid under great [103] obligations?

55. Therefore give, do give [104] happiness to your subjects. They are my *own* children,

56. You should be grateful [105] by redeeming [106] the debt to-day. It would be good for (your) reputation.

Mark BHAVANI SWORD.

53. The Hindus, however, being magnanimous by nature, I protected you.

54. Have you not thus been laid under deep obligations?

55. Make, [104] then, your subjects who are my own children, happy.

56. It will be good for (your) reputation if you show your gratitude now by discharging [106] this debt (of obligation).

Mark (of) the BHAVANI SWORD.

Literal and official translation compared and examined by me.

(Sd.) N. L. MANKER,
Sixth Translator.

H. I. M.'s High Court, Translator's Office,
Bombay, 8th September 1897.
M. 123.

No. 27 (2).

PORTION OF EXHIBIT B (2).

व्याख्यानाचे शेवटीं प्रो० भानू असें म्हणाले कीं,
vyakhyanache shevatin pro Bhanu ase mhanale kin
Of the lecture at the conclusion Professor Bhanu thus said that

At (the) conclusion of the lecture Professor Bhanu said thus :—

ह्या उत्सावापासून प्रत्येक हिंदूस, प्रत्येक मराठ्यास मग
hya utsavapasun pratyek Hindusa pratyeka Marathyasa maga
this at festival every , Hindu every Maratta then (*i.e.*, no matter

Every Hindu, every Maratta, no matter (to) whatever party he (may

तो कोणच्याही पक्षाचा असो आनंद झालाच पाहिजे. नष्ट झालेलें
to konchyahi pakshachya aso ananda zalacha pahije. Nashta zalele
he whatever of party belong must necessarily rejoice. Lost

belong must necessarily rejoice at this festival. We are all bnsy to regain

स्वातंत्र्य पुन्हां मिळविण्याचा आह्मा सर्वांचा उद्योग आहे.
svatantraya punhan milvinyachya Amhan sarvancha uddyoga ahe
liberty, *independence of* re- *gaining* we of all business is

(our) lost liberty (*independence*) and this formidable (*terrible*) burden is *to be* uplifted by

व हें भयंकर ओझें सर्वांनीं मिळून उचलावयाचें आहे. हें
va hen bhayankara ozen sarvannin millun uchalayvaanche ahe hen
and this formidable, *terrible* burden by all to-gether *to be* uplifted is. This
(us) all to-gether. (It) will never (be) proper to place obstacles

ओझें उचलण्याचा ज्याला ' जो मार्ग योग्य वाटेल
ozen uchalnyachya jyala jo marga yogya vatel
burden of uplifting to any person which ever way, path proper deems
(impediments) in the way of any person (who) with a true

त्या मार्गानें तो खऱ्या मनानें जातअसतां त्यास आडकाठी
tya margane to kharya mananen jatasta tyasn adkathi
that *by* way he true with mind follows to that obstacles
mind follows (the) path (of) uplifting this burden in the way he

घालणें केव्हांही योग्य व्हावयाचें नाहीं. आमच्यांतील एकमेकांच्या
ghalanen kevhanhi yogya yhavayache nahi. amchyatil ekmekachya
to place ever proper will be not. Amongst us our mutual
deems proper. Amongst us (by) our mutual disagreements our progress is

भांडणांमुळें आमच्या प्रगतीस फार अडथळा होतो. जर कोणी
bhandanamullen amchya pragatis far adathala hoto. jar koni
disagreements our progress greatly impeded is. If anyone
greatly impeded. If any one is pressing down *the assembled* multitude (*country*)(1) from

राष्ट्रास वरून खालीं दडपत असेल तर त्याला छाटून काढा
rashtras varoon khalin dadpat asel tar tuala chhatun kadha,
to the *assembled* (1) from above down is pressing then him sort (2) *cut* *off*
multitude.
the country (1)
above then separate (*cut off*) (or set aside) (2) him but do not make

पण इतरांस आडकाठी करूं नका. आजपर्यंतचें झालें तें
pann iterans adkathi karun naka. Ajparyantachen zalen ten
but to others obstruction make not up to now happened that
obstruction to others. (What) happened up to now has happened. Let

झालें तें विसरूंया व एकमेकांस त्याची
zalen ten visrunya va ekmekas tyachya
happened that let us forget and to each other for that
us forget that and let us forgive each other for that. What (have we)

क्षमाकरूंया घुशीच्या व मांजरांच्या मारामारी इतकीच ज्या
kshamakarunya Ghushachya va majranchya maramari itkach jya
let us forgive of rats and of cats fight *only*, so much that
not had enough (of that) strife (which will) have (the same) value.

भांडणाची थोर पुरुष किंमत करतील तें भांडण पुरें नाहीं
bhadannachya thor purush kimmat kartil tan bhandanna puren nahin
of strife great men value will make that strife enough not
with great men as *only* a fight amongst rats and cats? As many occasions

कां झालें? सर्व राष्ट्राच्या[1] एकी करणारे ह्या उत्सवासारिखे
kan zalen? Sarva Rashtrachya eki karnnaren hya utsavasarikhe
what had whole *of* multitude unity making this festival-like
like this festival (as possible) which make the whole multitude to

जितके प्रसंग येतील तितके चांगलेच असें सांगून प्रोफेसर साहेबांनीं
jitke prasanga yetil titke changalecha ase sangun profesar sahebanin
as many occasions will come so many good so after saying Professor Saheb
unity will come, the better of course, Professor Saheb concluded his

आपलें भाषण पुरें केलें.
Aplen bhashana puren kelen
his speech concluded.
speech after saying so.

Portion of Exhibit B (2) transliterated and translated word for word as amended in red ink by me.

(Sd.) L. N. MANKER,
Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, 8*th September* 1897.
M. 123.

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1. राष्ट्र rastra = Country, realm, region, territory or tract, an assembled multitude, &c., (Molesworth's Dictionary, p. 695, col. 1.)

2. छाटणें Chhátanen = To clip, to cut, cut off, to pick, sort, part off, to separate into classes, &c. (*Ibid*, p. 299, col. 3.)

No. 28.

[*Translation of passages from a "Dictionary of the Marathi language" (Marathi into Marathi) compiled by seven Pandits in the service of the Bombay Education Society, and published in two volumes in 1829 A. D., under the authority of the said Society.*]

Vol. I.

(The first sense.)

"दाद (Dáda) *f.* Such access of grievances, &c., fit to be represented by a helpless man to Royal authorities such as King, &c., as would create in them a tendency to give consideration to them (grievances), used with the root लाग (Lága) कोणेकास दाद देणें (Konekása dáda dene—to grant dáda to some one) means to treat him as one deserving of consideration; या राज्यांत दाद नाहीं (Yá rájyánta dáda náhin) there is no dáda in this Kingdom, in such cases (means), though complaint is made yet no notice is taken thereof."

Vol. II.

"साहणें (Sáhanen) सोसणें (Sosanen) in the first sense."

The first sense of सोसणें (Sosanen) is as follows:—

"सोसणें (Sosanen) to hold in contact with one's self any object (thing) such as pain, calamity, heat (or) cold, offence done by others, burden, &c., which affects one in an adverse manner by preventing with one's own power the production of or disregarding, if produced, the uneasiness such as anger, irritation, &c.. arising from its contact."

"सोशीक (Sosika) *adj.* lit. used in three genders, one having the nature of enduring and keeping quiet over an offence given to one by somebody (an offence such as abuse, taking away of wealth, &c., or over the pain created by hunger, disease, &c.)"

A true translation.

(Sd.) GANESH KESHAVA VAIDYA,

Third Translator.

H. I. M.'s High Court, Bombay,
Translator's Office, 8th September 1897.

M. 134.

No. 29.

[*Translation of a passage from the Marathi into Marathi Dictionary of the Marathi language compiled by seven Pandits and referred to already.*]

वरून (Varun). Indeclinable.—From the place denoted by the indeclinable वर Vara (above) or inclusive of the place of starting, *e.g.*,

माडी	वरून	खालीं	उतरला.
(Madi	varuna	khalin	Utaralá).

उतरणें (Utaranen).—To bring to a lower place an object stationed in an upper place, *e. g.*,

डोकीं	वरचें	ओझें	खालीं	उतरकींरे!
Dokin	varchen	ozen	khalin	uterakinre!

दडपणें (Dadapanen).—To compress a substance under the weight of some other substance; (2) To reduce one by disputation, &c., to a lower position and exalt one-self; "to exalt one-self at the expense of others."

No. 30.

[*Portion of Exhibit B2 transliterated and translated word for word as follows.*]

म्लेंच्छाना Mlénchhana to (the) Mlenchhás		हिंदुस्थानच्या Hindusthanach*yá* of Hindustán
राज्याचें Rájiyáchén of (the) kingdom		ताम्रपट Tamprapata (*a*) copper (*a*) plate (on which grant, &c., are inscribed).
परमेश्वरानें Paraméshvaranén *by* God	दिलेलें dilele*n* give*n* grant*ed* *conferred*	नाहीं náhin *is* not

Literal translation.—A copper plate (on which grants, &c., are inscribed) of (the) Kingdom of Hindustan *is not given to the Mlenchhas by God.*

Official translation.—God has not conferred upon the Mlenchhas the grant inscribed on a copperplate, of the Kingdom of Hindustan.

Portion of Ex. B2 transliterated and translated word for word, as amended in red ink, by me.

(Sd.) N. L. MANKER,
Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, 10TH SEPTEMBER 1897.
M 168.

No. 31.

[*Translation of a Marathi article printed on pp.* 20-22 *of a book styled "Bálabodh" purporting to have been published in* 1888.]

IS INDIA GETTING RICH OR POOR?

This question is so difficult that persons thoughtful (and) highly educated hold quite conflicting opinions upon it; and it becomes difficult to ascertain the truth in them. Nevertheless it is equally necessary for both the young and the old to think

(*a*) *Vide* Molesworth's Marathi into English Dictionary, page 376, col. 1.

over it. For this subject is very intimately connected with all our dealings in life, or, it may perhaps be safely regarded as their very soul.

Let us, then, first of all determine what sense (the term) rich conveys. Howsloever lengthy and difficult its definitions in political economy, all from the most illiterate to the most highly educated unanimously consider him rich who has ample. wealth, and after all experience confirms this view as being substantially correct. Bearing this in mind, all men may from a practical point of view, be classed under the following seven heads :—1. Sovereigns; 2. (The Aristocracy consisting of) the Durbârs, Sardârs, Mankaris, Jahagirdârs; 3. Merchants and traders; 4. (Artists and) Artisans; 5. Professional men; 6. Servants; and 7. Beggars (or Paupers).

When (we) consider the first of these (seven classes) it plainly appears that in former times the sovereigns were our (own) countrymen, (and) therefore as such received the revenues of the country, which have now gone into the hands of foreigners. Therefore so far as this class comprising sovereigns is concerned, it is obvious that India is getting poor.

The second class is (the Aristocracy comprising) Sirdârs, Jahagirdârs, (and) Mankaris. The same is the case with them; for the sovereign power which is their sole support is lost; so this class of persons is now considerably reduced in number when compared with what it was before; perhaps, is almost extinct. Consequently the wealth which should have remained in (this) country on their account does not (now) remain (in it).

Now (with regard to) the merchants (and) traders (who) come under the third class. Although no internal change is perceptible in their case, still enormous foreign wealth being brought into this country as capital invested in Railways and other like concerns, lacs of rupees are flowing out in the form of interest on this (capital). Moreover nearly the whole of the commerce of this country with foreign countries is in the hands of foreigners, which is also taking away the stream of wealth out (of the country).

(Now) considering (the class of) (artists and) artisans, it appears that there being in this country a very large demand for commodities manufactured in foreign countries, all our indigenous manufactories are dying out and our artisans are reduced to begging. British articles, valued at 32 crores of rupees, are annually consumed in India! Thus commerce has plainly been drawing out the wealth (of the country).

(As to the remaining three classes, *viz.*):—Professional men comprising doctors, lawyers and others, servants, and beggars (or paupers). These are all only persons interchanging wealth among themselves (*i.e.*, are the consumers), but not the producers of wealth. For all their dealings being reciprocal, exchanges draw no wealth from other countries. There is, therefore, no necessity at all to speak (further) about them.

So, then, you see that even though in our country any number of new buildings be raised, any number of railways be constructed, and telegraphs opened, any number of mills worked, and any number of such other things happen, so as to give rise to the supposition that wealth is increasing, it is all delusion, and this is to be understood for certain that India is getting poor day by day. Plumpness is a result

either of a swelling of the body or of the accretion of flesh and blood, but we must make a distinction between a swelling and plumpness caused by an accretion of flesh and blood.

A true translation.

(Sd.) N. L. MANKAR,
Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,
TRANSLATOR'S OFFICE, 8TH SEPTEMBER 1897.
M. 125.

No. 32.

[*Translation of Marathi verses printed on pp. 29-30 of a book styled 'Bálabodh', purporting to have been published in* 1888.]

THE UTTERANCES OF SHIVAJI MAHARAJA FROM HEAVEN.

ARYA (-METRE).

Where have those sprung from my tribe gone (?) What has become of my kingdom (?) Why does my noble mother lament, uttering loud cries. 1.

The exertions made to protect the cows and the Brahmans (and) to preserve the Hindu religion on this earth have been all made fruitless by these Yavans (a) (Mahomedans or foreigners). 2.

How has the boon which Bhawany, the tutelary Goddess of my tribe, gave me, become fruitless. Is even Destiny (b) afraid of Kaly (c). 3.

O! I feel surprised in my mind how, indeed, all the eminent good qualities that were in my men (resided in my men) have disappeared all at once. 4.

Leaving my dear people where is that valour gone with which their arms were itching (or burning) to fight the very powerful Yavans (Mahomedans or foreigners). 5.

How has that extraordinary determination become extinct in such a short time with which the Marathas advanced *on the battle-fields to die*. 6.

It is not known (*i.e.*, is not clear to me) how the whole progeny of those who were inspired with great heroism at the sight of the Bhagawa Jhenda (d) (red flag (d)), has become worthless. 7.

Looking upon the cows as Goddesses in every respect we used to worship them with sincerity. (They) kill them to fill up the belly, how should we bear it. 8.

The Brahmans are, in other words, the Gods of the earth. Their feet should always be saluted (bowed to). (Pity it is) that they should go to the doors of the Yavans (a) (Mahomedans or foreigners), saying "Oh, Give" "Oh, Give"! 9.

(a) (An Ionian or Greek, but now applied to a Mahomedan and to an individual of a foreign race generally.)

(b) ('Vidhi,' which is the text of this word, also means Brahmá, the first of the Hindu Triad, the originator of the Universe.)

(c) (The fourth age of the world, the iron age, this age personified.)

(d) (The ensign of the Marathas.)

The descendants of those whose feet the dust of the earth never touched are begging, because they have nothing to eat! 10.

My mind very much grieves indeed at seeing this change of state, what shall I do (?) That what is to happen no one can avoid, is powerful indeed. 11.

What is the use of my disliking that which God liked (?) Demons, Gods (and) all helplessly have to submit to the all-powerful course of fate. 12.

A true translation.

(Sd.) N. L. MANKAR,

Sixth Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, 8TH SEPTEMBER 1897.

M. 126.

No. 33.

[*Translation of Marathi verses in the 'Pushpa Vatica'* [*or a collection of new Marathi Poems by Vinayek Konddeo Oke, at pp.* 14 *and* 15.]

PATRIOTISM.

VERSES.

Oh fools why have you become males! Why should you keep large mustaches You feel no shame that you are suffering slavery ! Alas ! try at least (some) means to destroy life ! (1)

How do you sit quiet throwing away patriotism as if you are unmanly! Rise. Liberate this mother who is suffering troubles. Awaken the heroism in (your) mind. (2)

The country, birth in which is a good fortune, should be beaten and looted by strangers ! How should you sit inactive seeing this ! With regard to this disposition hold some shame at least. (3)

Hold patience in mind and weapon in hand and have the name of Rama in the mouth which is sung by saints. Resolve to kill the Mlenchhas. You will surely obtain victory. (4)

O they slaughter calves and cows, very wicked Chandals (low and cruel people as if they are butchers. They have become a burden to the earth. Let us lessen it). This is liked by (acceptable to) the Lover of Shri (God). (5)

All people call this country Hindustan. How do Mlenchhas have swarajya (self-rule) in it. Know that it is great shame. Do not forget (your) name. Hold fast patriotism in the mind. Slap (your) arms, rise, fight. May good victory come in the destruction of the wicked. (6)

Of what (use) is his life on (this) earth who does not accomplish the good of this country ! He only wastes the food which he eats for nothing and becomes a useless burden upon the earth. (7).

In this manner Shivaji uttered words. At that time his crowd quivered with bravery. The irresistible Mavlas issued out to fight saying we will kill or die.

A true translation.

(Sd.) GANESH KESHAV VAIDYA,

Third Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, 11TH SEPTEMBER 1897.

M. 169.

No. 34.

Catalogue of publications for sale at the Government Central Book Depôt, Kalbadevi Road, Bombay, 1st April 1875.

Page 29.

* * * *

	Rs.	a.	p.
Oke's (V. K.) Pushpa Vatika, a poem	0	6	0

No. 35.

Verse No. 64, at p. 85 of Max Müller's hand-books for the study of Sanskrit :— The Hitopadesa, Books II, III and IV, 1865.

असंतुष्टा	द्विजा	नष्टाः	संतुष्टा	इव	पार्थिवाः ।
Asantushtà	dwijà	nashtáh :	Santushtà	iva	parthivàh :
Discontented	twice-borns	(are) lost,	contented	as	kings ;
सलज्जा	गणिका	नष्टा	निर्लज्जाश्च	कुलस्त्रियः ॥	
Salajja	ganiká	nashta	nirlajashacha	kulastriyaha	
With modesty	a mistress	(is) lost,	immodest and	noble women.	

No. 36.

[*Translation of the 1st paragraph of the Life of Shivajee appearing in the Marathi Fifth Book of the School Series as described below.*]

The Department of Public Instruction, Bombay.

MARATHI FIFTH BOOK, 1896, Fourteenth Edition, page 312.

SHIVAJI.

(Born A. D. 1627 ; died A. D. 1680.)

This great hero flourished in this Maharashtra country. Whatever opinions may be entertained by people of other countries about him we have not to mind them. But he made the name of us the people of Maharashtra famous ; he showed to the whole world that we possess valour, courage and other qualities ; he established a kingdom of our people and lifting us out of perfectly uncivilised state he raised us

to considerable importance. These thoughts come into our minds and a feeling for veneration for him is produced in us and we feel very proud that one time in the past our country produced a man like that. What wonder is there in this? It is on this account that we write here a short life of his.

A true translation.

(Sd.) ANAJI B. ANGAL,

for Chief Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, 10TH SEPTEMBER 1897.

M. 170.

No. 37.

Joshi's Grammar.

[*Translation of an extract from 'A Higher Marathi Grammar,' by Ramchandra Bikhaji Joshi, 2nd Edition, 1895, page 165.*]

And in the English language, this root (अस् =to be) has been for this reason called a 'joining link,' (*i. e.*) a copula.

* * * * *

(Page 166.)

Having expressed whatever we have to say about the subject, by the form of another noun, simple adjective or participle adjective in a sentence, the verbal forms of the root 'अस्' (to be) should be used after it. * *

This will be clearly understood by those who know the Sanskrit language.

A true translation.

(Sd.) GANESH KESHAV VAIDYA,

Third Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, 13TH SEPTEMBER 1897.

No. 38.

[*Translation of an extract from 'A New Grammar' of the Marathi language by Krishna Shastri Godbole, 2nd edition,* 1874.]

Pp. 118-9.

Art. 123.

Simple present, past and future tenses denoting negation are formed by using the verb नाहीं (nahin) with participles evading in the terminations of त (ta), ला (lá) and णार (nár) respectively.

There are no forms expressing negation of the tenses, present imperfect, present perfect and present prospective.

In deriving other compound tenses expressing negation, it would be sufficient to substitute the verbs of the root नस् (nas) instead of those of अस् (as) in article 308, *viz.* :—

Present	Simple Past.	Future.
जात नाहीं	गेला नाहीं	जाणार नाहीं
Jat náhin	Gelá náhin	Jánár náhin
(let) going not—is	gone not—is	be going not—is
does not go.	did not go	will not go.

A true translation.

(Sd.) ANAJI B. ANGAL,

for Chief Translator.

H. I. M.'s HIGH COURT, BOMBAY.

TRANSLATOR'S OFFICE, 11TH SEPTEMBER 1897.

No. 39.

Dadoba's Grammar.

[*Translation of extracts from a Grammar of the Mahrati language by the late Rao Bahadur Dadoba Pandurang*, 8*th edition*, 1895.]

Page 170.

Section 2.

I. रुपाविचार (Rûpa Víchára).

Discussion of (positive and negative) forms.

475. रुप (Rûpa) or form is the change in (the verbal form of) a root when that root is conjugated (so as) to express assertion or negation, *i.e.*, in the sense of 'aye' or 'nay.' These Rûpas (forms) are of two kinds, one करणरुप (Karana Rûpa) or positive form and the other अकरणरुप (Akaran Rûpa) or negative form.

* * * * *

II. P. 239.

Negative forms :—Assertive Indicative Mood, Present Tense.

मीं देत नाहीं (Min dêta nâhin) I giving not, *i. e.*, I do not give.

Past Tense.

मी or म्यां दिलें नाहिं (min or myan dilên nahin) I gave not, *i. e.*, I did not give.

* * * * *

A true translation.

(Sd.) GANESH KESHAV VAIDYA,

Third Translator.

H. I. M.'s HIGH COURT, BOMBAY,

TRANSLATOR'S OFFICE, 13TH SEPTEMBER 1897.

APPENDIX C.

S. 124A OF THE INDIAN PENAL CODE.

How Sec. 124A has been interpreted by "Distinguished persons."

Chapter VI. of the Indian Penal Code deals with Offences against the State. It consists of eleven sections. As pointed out by the Law Commissioners, "the principal offence provided for in this chapter is waging, or attempting to wage, war against the Government, or abetting the waging of such war; after which is the offence of concealing a design to wage such war; next is the assaulting, or wrongfully restraining or overawing, by means of a riotous assembly, the Governor-General, or any Governor or Deputy Governor, or Member of the Council of any presidency, in order to induce or compel him to exercise, refrain from exercising, any of his lawful powers." Then comes S. 124A which runs as follows :—

"124A. Whoever by words, either spoken or intended to be read, or by signs or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

"*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

This provision, by some unaccountable mistake, had been omitted when the Penal Code was passed in 1860. It stood as S. 113 of the draft Code published in 1837, and Sir Barnes Peacock was quite unable to account for its omission when the Code was enacted. The draft section did not meet with unanimous approval at the time. Mr. Norton objected to it on the score of its "vagueness" and "enormous severeity." Mr. Huddleston thought the clause to be "wholly indefensible." Mr. Cochrane commented upon it in these terms:—"I think that as a mere matter of public policy, every Government should avoid punishing mere words, unless such be accompanied by acts injurious to the interest of the State. But this clause does not only apply to words, but is in fact a direct attack on the public press. The expression as 'is compatible with a disposition to render obedience, which is the qualification of the clause, appears to me of a very dangerous tendency and calculated to place men's rights and liberties in the discretion of each particular judge." The Law Commissioners thought the judge's discretion was pretty well guided and limited by the explanation annexed to the Section. They further observed:—

"As to sedition, there can be little question, we are convinced, that the object of exciting feelings of disaffection to the Government may be effected more easily, more suddenly, and, therefore, more dangerously, by an inflammatory declamation on a popular

topic, addressed to a multitude by a skilful orator, than by the circulation of written or printed papers. Mere vague words, spoken at random, ought not indeed to be brought within this clause (Section 113); but as in the Digest of the English Law Commissioners it is laid down that *words spoken shall not be deemed to constitute an overt act of any treason unless they be words of advice, direction or persuasion,* tending *to excite* the people, to whom they are addressed, *to a degree of disaffection incompatible with a disposition to render obedience* to the lawful authority of the Government, &c., and spoken under circumstances indicating a design to cause such excitement, or under circumstances from which the speaker must have known it to be likely that the words spoken by him would cause such excitement."

On the 2nd August 1870, at a meeting of the Supreme Legislative Council at Simla, the Hon. Mr. Stephen moved for leave to introduce a Bill to amend the Indian Penal Code, embodying the Section in the Code as drafted by the Law Commissioners. In the Statement of Objects and Reasons it was pointed out that :—

"Sections 121 to 130 of the Code deal with offences against the State. But no mention is made of seditious speaking or writing. In the draft Code originally prepared by the Indian Law Commissioners, and published in 1837, appears a section resembling section six of the present Bill, and its omission from the Code as ultimately enacted was due to a mere oversight. Attempts to excite disaffection to the Government by words or writing are now punishable only when they can be proved to amount to abetments of the offence of waging war against the Queen; and as this proof implies the actual existence of war, and must often be a matter of extreme difficulty, it seems desirable that some such provision should become part of the law of British India."

The Hon'ble the Law Member, in explaining the intention of the proposed amendment, remarked :—

"Nothing could be further from the wish of the Government of India than to check, in the least degree, any criticism of their measures, however severe and hostile, na y, however disingenuous, unfair, and ill-informed it might be. So long as a writer orspeaker *neither directly or indirectly suggested or intended to produce the use of force,* he did not fall within this section. This, however, must be coupled with a warning. The question on trial under this section would always be as to the true intention of a speaker or writer, and this intention would have to be inferred from the circumstances of the case. The most bitter and unfair criticisms published by a newspaper in the common course of its business might be perfectly compatible with the absence of any intention to *advise resistance* to lawful authority. Language, temperate in itself and justifiable as far as the express meaning of its terms went, might, if addressed to an excited mob, be the clearest proof of an intent to produce forcible resistance to authority. Whilst genuine criticism had nothing to fear from the proposed section, persons seditiously disposed must not suppose that they could evade its provisions by confining themselves to what, under other circumstances and in other persons, might be genuine criticism."

On the 25th November 1870 the Hon. Mr. Stephen, in moving that the final report of the Select Committee on the Bill to amend the Indian Penal Code be taken into consideration, entered into a full explanation of the policy of Government in respect to the measure. Sir Barnes Peacock had proposed an amendment to S. 113 in the draft Code. The Select Committee did not consider it an improvement on the original draft of the Commissioners. It was thus worded :—

"Whoever attempts to excite or to induce, or does anything which he knows to be likely to excite or to induce, the people or any class or portion of the people, who live under the Government of India, to entertain such feelings of disaffection to that Government or to any Government in India, as are likely to induce or cause them to resist or disobey the lawful authority of the Government of India or of such other Government, or to abet such resistance or disobedience, or by reason of such disaffection to break the peace or to violate the law, or to abet any such breach of the peace or violation of the law, shall be punished, &c."

In explaining the superiority of the provision embodied in the Bill over Sir Barnes Peacock's proposed amendment, the Law Member pointed out that the latter was much more severe than the former, because

"The section now before the Council did not make it criminal to do things which people knew to be likely to excite disaffection. To punish the doing of an act which you knew to be likelyto produce disaffection might be to punish a man for doing an act which he had a

right to do, although it produced disaffection. He could imagine many things which a public man might have a right to do, even at the expense of exciting disaffection, but which, nevertheless, should not be punishable. Then, the section proceeded to describe the kinds of disaffection which it would be a crime to excite. These were such feelings of disaffection as were likely to induce any portion of the people, not only to resist, but to disobey the authority of the Government of India. That was carrying things a very long way, because the mere omission to do what you were told to do was disobedience. The mere non-payment of a tax was disobedience; and to punish a man for doing what was likely to induce people to disobey an unpopular law of any kind was far beyond what in his (Mr. Stephen's) judgment was desirable. In short, the Committee came to the conclusion that this clause was considerably more severe than the clause originally drawn by the Commissioners. That clause was greatly discussed at the time, and adhered to after careful discussion; and although he (Mr. Stephen) was not prepared to say that it was the best that could have been adopted, the Committee unanimously came to the conclusion that the best course was to leave it as the Commissioners had settled it. The clause was somewhat lengthy, but its substance was sound good sense. It provided that anybody who attempted to excite disaffection might be punished; but it insisted on the distinction between disaffection and disapprobation. It expressly provided that people might express or excite disapprobation of any measure of the Government that was compatible with a disposition to render obedience ao the lawful authority of the Government; in other words, you might say what you liked tbo nt any Government measure or public men; you might publish or speak whatever you pleased, so long as what you said or wrote was consistent with a disposition to render obedience to the lawful authority of Government. *Let it be shown that the matter complained of was not consistent with a disposition to obey the law; let it be shown that it was consistent only with a disposition to resist the law by force, and it did fall under this section. Otherwise not.*"

He then proceeded to assert that "this law was substantially the same as the law of England at the present day, though it was much compressed, much more distinctly expressed, and free from a great amount of obscurity and vagueness with which the law of England was hampered." In Russell on Crimes the following was put forward as the test by which the seditious character of a publication on political subjects might be determined :— .

"Has the communication a plain tendency to produce public mischief by perverting the mind of the subject and creating a general dissatisfaction towards Government ?"

"That was," remarked the Hon. Mr. Stephen, "infinitely stronger than anything now proposed. It would make any publication a crime which excited any general dissatisfaction with Government, however reasonable that dissatisfaction might be. The proposed section did nothing of the kind. It said in so many words, you may create disapprobation as much as you please, so long as it is consistent with a disposition to render obedience to the lawful authority of Government." . . . .

. . . .

"There was another objection which had been urged by the British Indian Association, to which great weight was due. They said that if legislation once took the shape proposed, there would be no end to malicious prosecutions. This, however, was completely answered by the provision, that no prosecution should be commenced under this section except under the authority of the Government. *That showed that this was a weapon to be used in no case except when the peace of the country was, in the opinion of those who were at the head of the Government, seriously endangered*, and that was a very effectual check to prevent the law being used in an oppressive manner. . . . . .

"To advocate the liberty of the Press absolutely would be nothing else than to advocate the doctrine that everybody should be allowed to write what he liked. That was obviously absurd. *The question was not whether the press ought or ought not to be free; but whether it ought to be free to excite rebellion.* He did not believe that any sane man would say, in so many words, that all people ought to commit any crime whatever, so

long as they did not commit overt acts themselves. *But no degree of liberty short of this would justify a journalist or any one else in exciting people to commit rebellion* . . .

. . . .

"So much with regard to what people might say. He would now state what they might not say. *They might not say anything of which the obvious intention was to produce rebellion.* It might be difficult to frame a definition, which would, by mere force of words, exactly include the liberty of saying all that you meant to allow to be said, and exclude the liberty of saying that that you did not mean to allow to be said. But although there was considerable difficulty in framing a definition of the kind, there was none whatever in drawing the line yourself . . . . You could no more mistake the severity of criticism, or the severity of discussion, for the writing of a person, *whose object was to produce rebellion or excite disaffection against the Government*, than you could mistake the familiarity of friendship for the familiarity of insult . . . ."

The Hon. Mr. Stephen also moved that the Bill as amended be passed. The motion was put and agreed to.

On the 14th March, 1878, the Honourable Sir Alexander Arbuthnot, in moving leave to introduce a Bill for the better control of publications in Oriental languages, which was afterwards known as the Gagging Act, thus commented upon Sec. 124A of the Indian Penal Code with a view to justify the new measure:—

"My Lord, I have said that the existing law is inadequate for the suppression of the evil which this Bill is intended to remedy. The existing law is contained in an Act of 1867 which provides for the registration of printing-presses and newspapers, and in a section of the Indian Penal Code, which makes seditious words or writings punishable. Now this section of the Penal Code really furnishes a very inadequate means of dealing with such writings as those with which this Bill is intended to deal. In the first place, the explanation which has been added to the section renders the penalties inapplicable to any case in which there is not an obvious intention on the part of the writer to *counsel resistance* to, or subversion of, the lawful authority of the Government . . . . The distinction made in the section, to which I have referred, between writings which indicate a manifest intention on the part of the writer to *instigate resistance* to the authority of the Government, or subversion of that authority, and writings which, while expressing strong disapprobation of the acts, conduct, or policy of the Government, are not inconsistent with a disposition to render lawful obedience to Government, is a very reasonable and proper distinction. It would, of course, be possible to introduce into the Penal Code a provision rendering penal all writings calculated to influence the minds of the people against their rulers, irrespective of the intention of the writers, but such a provision must be of general application, and, like the rest of the Penal Code, it must be essentially punitive . . . . For reasons which I will explain presently, the provisions of the Bill will apply only to one class of writers, namely, the writers in the Vernacular Press, and the measure is not so much a measure of penal, as it is a measure of preventive, legislation."

Sir John Strachey, in his speech on the Vernacular Press Bill, observed that a journalist

"Must respect the existence of the form of Government under which he enjoys and exercises those very extensive rights and privileges to which I have referred. A public journalist must not, either covertly or openly, devote the pages of his journal to overthrow the Government."

Lord Lytton, in concluding the proceedings of the Council, remarked:—

"The law as explained by the honorable mover of the Bill is, in its present state a very questionable instrument. The explanation of disaffection may be taken to explain away almost any incitement to disaffection that is not followed by rebellion. So that the probability of securing a conviction would always be doubtful."

APPENDIX D.

THE INDIAN PRESS ON THE TILAK CASE.

PART I.—LEGAL ASPECT.

(The *Hindu*, September 18.)

DISAFFECTION AND INTENTION.

SIR,—You have clearly set forth the law of sedition as enunciated in the Penal Code and the interpretation put upon it by Mr. Justice Strachey. It is plain that his lordship holds a different view from that of Sir Comer Petheram and lays down a most dangerous test of liability under the section. If Mr. Justice Strachey's view were to be understood as the established law of the country, surely, as you say, no journalist who is not a hired sycophant is safe. The clue to his lordship's view seems to me to be found in *his* ideas of disaffection and intention, and I venture to say that he is entirely mistaken in both. His lordship said : "The word disaffection simply means want of affection, feeling of dislike, hatred, ill-will or hostility to Government, *but in the section there is no degree of feeling given.*" (The italics are mine.) It is really difficult to see how his lordship could say that "in the section there is no degree of feeling given, when the degree is clearly defined in the explanation. I advisedly say that the explanation contains a *definition* of the word disaffection. To go to a dictionary for an explanation of the word and then to hold that 'no degree of feeling is given in the section' is surely unwarranted. The word is defined in the explanation in the usual geometric way of definition *per genus et defferentia.* It is thrown under the class of 'disapprobation' and distinguished from it by a certain degree of intensity, the degree being incompatibility at the least "with a disposition to support the lawful authority of Government against unlawful attempts to resist that authority." Disapprobation is chosen because it has a very plain meaning. If you say that the Frontier Policy is bad, that is clearly disapprobation; when it reaches the degree stated above, it becomes disaffection. The only peculiarity of the definition is that it is negative, the word is defined in the negative way by showing what it is not It is, as I have said, really difficult to see how his lordship has come to ignore the explanation which stated the necessary 'degree of feeling' while his lordship seemed so much at a loss to know and which his lordship thought is not given in the section. The only solution reems to me to be this. His lordship has laid strees on the word "*measures*" (of Government.) His lordship speaks of famine and plague as not being measures of Government and straightway proceeds to define the word in terms of Austin's definition of the word 'act,' and the conclusion to which he is necessarily driven is that the degree of feeling mentioned in the explanation refers only to disapprobation of the 'measures' of Government and has no reference to 'disaffection' occuring in the first clause of the section Therefore 'disaffection' in

the first clause must be explained in the light of authorities other than the section. If this were so, it would come to this : the first clause punishes (exciting) disaffection. The second clause, instead of being the protection that it is considered to be, itself punishes (the exciting of) disapprobation of *measures* of Government unless it falls within the degree mentioned there. There are then two distinct offences, one, exciting (or attempting to excite) disaffection, in the first clause; two, exciting disapprobation of the measures of Government, provided it reaches a certain degree, in the second clause. Such a construction of an 'explanation' is, it appears to me, converting a declaratory law into a substantive one, and therefore inapplicable. Again, if the second clause refers exclusively to 'measures,' it would only be an application of the first clause not deserving a place in the body of the section but fit to be given only as an illustration of the first clause. That stress is not to be laid on the word 'measures' would appear clearly if the clause is thrown in the positive form. The negative form is resorted to because it ensures accuracy in brevity. Put in the positive form, it would run thus:—"Such a disapprobation of the measures of the Government as is incompatible with a disposition to render obedience, &c., *is* disaffection. The insignificance of the word can be now seen clearly. For, if stress is to be laid on the word, it would be the liability and not the protection that would arise in reference to measures. The result would be not (as Mr. Justice Strachey would have it) merely that the exciting of disapprobation over the measures of the Government is protected provided it does not reach a certain degree; but that the exciting of any degree of disapprobation should go unpunished provided it is not over the measures of the Government. But the truth is that the word does not bear the stress that is sought to be laid on it. It is defined nowhere in the Code, and its ordinary meaning has a very wide application. You most pertinently remark: "His lordship distinctly says that comments calculated to excite feelings of dislike, hatred or hostility to Government—even though they may not be manifested in a positive form—in regard to famine or plague over which the Government has no control, would not be considered as coming under the protection given by this section." In other words if a journalist says that *under the British rule* famine and plague are becoming periodical, that Hindus are getting demoralised, and so forth, he would be under the section; for plague and famine, and demoralisation are no measures of Government, over which they have any control. According to his lordship then the first clause punishess editious practices working upon the superstitions of the people and the second the seditious practices working on their reason, which seems to be far from the intention of the Legislature. I have already taken up much space, and shall therefore beg to reserve what I have to say on 'intention' for my next article if you allow me to do so. However, let me say here that I agree with you in thinking that his lordship held an erroneous view with regard to intention, but I beg to differ from you in thinking that his lordship's error was not in taking intention alone into consideration as you say, but in not having taken it into consideration at all. You say that according to his lordship 'intent alone and not the likelihood of its leading to disaffection is the element of sedition.' I shall try to show that intent and likelihood of its leading to disaffection mean one and the same thing, and that Sir Comer Petheram's intention is quite different from either of them—a fact which was most unfortunately lost sight of in Mr. Tilak's case.

LEX.

Reis & Rayyet, Saturday, 25th September 1897.

CAN IMPRISONMENT FOR SEDITION UNDER THE PENAL CODE BE RIGOROUS?

This is one of the several questions suggested by the trial of the *Kesari* in the Bombay Criminal Sessions. We raised this point in our last number, when we were not sure that Justice Strachey had made the order of rigorous imprisonment on the Hon'ble Mr. Tilak, the editor, proprietor and publisher of the Poona journal. It is now plain that the Judge thinks that the punishment of imprisonment under Section 124A, I. P. C., cannot be otherwise than rigorous. For, while passing sentence, he, addressing the prisoner, said : "I have come to the conclusion that I ought to pass upon you half the full term of imprisonment allowed by the section, namely, a sentence of eighteen months' rigorous imprisonment." Almost immediately our last number, pointing out that the section prescribed only imprisonment, was published, we were told that "you have made a serious mistake in your leader of this morning. The punishment provided for under Section 124A, as originally drafted, was rigorous imprisonment, but owing to a representation from the British Indian Association, and perhaps other public bodies, Sir James Stephen, with his characteristic ingenuity, changed the punishment into one of imprisonment. But under the General Clauses Act, 'imprisonment' is defined to mean either rigorous or simple, and the distinguished lawyer who is now presiding over the Bombay Sessions passed a strictly legal order in sentencing the arch conspirator Tilak to 18 months' rigorous imprisonment."

We confess that, while writing last week on the sentence passed by Justice Strachey, we took no note of the General Clauses Act, 1868,—" an Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes," which became law on the 4th January 1868, being promulgated on that day—and Act I. of 1887—" an Act for further shortening the language used in Acts of the Governor-General in Council, and for other purposes, " which was published on the 15th January 1887. After reading the two Acts, we are not convinced that our correspondent's correction is correct. Let us now examine, first, the General Clauses Act, 1868, and see whether it meets our contention. Indeed, Section 2 of the said Act says :

In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context—

(18) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code.

This definition itself may be said to take the Indian Penal Code—Act XLV. of 1860, which came into force from January 1862,—out of the operation of the General Clauses Act. There is another reference in the Act to the Code, namely,

Section 5. The provisions of sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of section three hundred and seven of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

It could be shewn, if necessary, that this Act is inconsistent with itself. It does not act up to what it lays down for itself and subsequent Acts. We will here point out that by its references to the Penal Code, the General Clauses Act may be taken to

treat the Code as an Act by itself, quite independent of it, at any rate, as regards punishment and their nature. The Act of 1868 justly keeps distinct the Code, which, as a criminal system of law, is not to be tampered with in an underhand manner. Every amendment of the Code must be direct and specific. Apart from its independent authority as a main law or general penal code, as an antecedent law, the Penal Code has precedence over the General Clauses Act, 1868, which is not an amending Act as it is not an explaining law for the earlier Acts. This General Clauses Act also does not profess to override the Code. It is preposterous to suppose that this Act can govern the Code. Depending on the Code for its existence, it will always be subordinate, and never superior, to the Code. That Act can apply only to such Acts as are not parts of Acts complete with definitions of their own. It does not profess to alter or amend the definitions of previous Acts, and we believe it to be wrong to make it applicable to any Act coming after it for amending an Act already in force, such as Act XXVII. of 1870, which, though called an Act, is only a part of the Penal Code, being an amendment of it. Any Act to amend the Penal Code cannot possibly be made according to the definitions of the General Clauses Act. It must follow the wording of the Code itself. If the General Clauses Act, 1868, were intended to govern the Code, it would have been framed differently, which, again, would have been a mere waste of time and energy. To suppose that the Penal Code is subordinate to the General Clauses Act, even in parts, is to deprive the Code of much of its glory as a finished law and Code—the pride of the legislation of India and the wonder of nations. Act XXVII. of 1870 has hardly any independent existence. Divorced from the Penal Code, it ceases to be a law. Correctly speaking, it is no independent Act but only a part of the Code and is nothing if not an accompaniment of the Code. It is no sensible construction that, while one part of an Act is governed by itself, another part is controlled by a distinctly different Act. Our objection would not apply if the General Clauses Act, 1868, were an Act to amend the Indian Penal Code. The general phrase "for other purposes" cannot possibly be construed to mean such an amendment. By its own provisions, therefore, the General Clauses Act, 1868, does not apply to Act XXVII. of 1870. Consequently, the argument cannot be good that the Act by which Section 124A was added to the Penal Code being an enactment later than the General Clauses Act, 1868, its interpretation applies to such parts of the Code as were added to it from and after the 4th January 1868 Again, if the legislature had intended that all Acts subsequent to Act I. of 1868 should be governed by that Act, all directions in Act XXVII. of 1870 amending the Penal Code) about imprisoment would have been "imprisonment" only and not sometimes "imprisonment" as in Section 5 (124A, I. P. C.) and sometimes "imprisonment of either description" as in Sections 4, 9, 10 and 12 (sections 121A, 225A, 294A and 304A, I. P. C.) Then, again, how to define "imprisonment" of Section 305 of the Indian Penal Code, which, existing when the General Clauses Act, 1868, was enacted, is unaffected by that Act? When one part of the Code remains unexplained while another is to be interpreted by the General Clauses Act, 1868, and while no other Act, antecedent or subsequent, clears up the word, it is not to be supposed that the Act of 1868 is any amender or expounder of the Penal Code. In the Act XLV. of 1860, appearing in the 1876 edition of the Unrepealed General Acts of the Governor-General in Council published under the authority of the Government of India, the General Clauses Act, 1868, is not referred to in

connection with Section 124A. Nor does any annotator of the Code, we believe, understand the said General Clauses Act to explain the word "imprisonment" in the Code.

We also do not see that the Act of 1887 goes against our contention. Both the General Clauses Acts, 1868 and 1887, repeatedly, in distinct language, exempt from their interpretation the earlier Acts or laws.

We do not take into account the present General Clauses Act (X. of 1897), for, while repealing them, it practically saves the Acts of 1868 and 1887 by enacting, that the definition, among other words and phrases, of the word imprisonment applies "also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887." We will only remark that "the third day of January, 1868," evidently refers to Act I. of 1868, which received the assent of the Governor-General on that day. It was not, however, published till the next day. The present rule of construction, namely, "where any Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General," not being then in force, it cannot correctly be said that Act I. of 1868 was law on the 3rd of January. The rule itself is bad. Ought a law be operative until it is published for general information? A law assented to on Thursday and not gazetted till Saturday must, therefore, be taken to be in force for 2 days before anybody is aware of its existence.

Our correspondent says that rigorous imprisonment for sedition originally intended, that is, proposed in the Bill, was changed into imprisonment, simply to befool the British Indian Association. It may appear so from the circumstance that, while four other sections, added simultaneously with Section 124A, have "imprisonment of either description," Section 124A has only "imprisonment." We do not, however, find that the Bill which became Act XXVII. of 1870 adding these and other sections to the Penal Code and otherwise amending the Code—the Bill as referred to the Select Committee—proposes rigorous imprisonment for sedition. How then to explain the difference between the two kinds of imprisonment in the sections added by the Act of 1870? It cannot be that the distinction was made without a purpose. The explanation given by our correspondent, as we have seen, is not correct. According to the definition of imprisonment in the Penal Code, it is of two kinds, namely, rigorous, that is, with hard labour, and simple, when not expressed to be rigorous. When the legislature created several offences all punishable with imprisonment and made one of them punishable with only imprisonment and the rest with imprisonment either rigorous or simple, with what sanity can the two widely distinct penalties be treated as one?

If there were any befooling by the Law Member, it was the Council passing the Bill that was befooled and not the B. I. Association objecting to the section. Section 16 of Act XXVII. of 1870 laid down:

The first schedule hereto annexed shall be deemed to be part of the schedule to the Code of Criminal Procedure.

In that schedule, the punishment attached to Section 124A, added by that Act to the Code, was and continues to be

Transportation for life or for any term and fine, or imprisonment of either description for three years and fine, or fine.

The section and the schedule were repealed by Act X. of 1872. But the mistake commenced in 1870 continues to this day. It could not be the intention of the legislature, while enacting the previous Criminal Procedure Code, X. of 1872, that the imprisonment for sedition should be rigorous against the enacting law of 1870. For then, steps would have been taken to make by an amendment of the Code, the punishment in the C. P. C. equal to that in the Penal Code. There have been amendments of the Penal Code since the addition to it of Section 124A. If it were intended to make its imprisonment rigorous or of either description, it could have been done by any of the amending Acts. It must also be remembered that the framers of the Code were for simple imprisonment for sedition.

This opens up a new chapter of how our laws are made. When the making of laws can be so irregular, to say nothing worse, one part disagreeing with another in an essential point, their interpretation and application may easily degenerate into oppressive illegalities.

Justice Strachey might with greater show of reason appeal to the amending Act XXVII. of 1870, provided its Section 16 remained unrepealed, than to the schedule of the present Criminal Code, for the legality of his sentence on Tilak. But, fortunately for the prisoner, the schedule of an Act is not an authority for punishment, and it cannot override the main law, of which it, at best, is a small part. Again, the schedule of the Criminal Procedure Code is no part of the Indian Penal Code. The rigorous imprisonment of the first schedule of the Act amending the Penal Code was made to apply not to the Penal Code but to the Criminal Procedure Code. (Here a question may arise whether Act XXVII. of 1870 not being an Act to amend the Criminal Procedure Code was good for adding any offences with their punishments to the schedule of the Criminal Procedure Code?) This inconsistency and perpetuation of mistake may explain the inclusion of rigorous imprisonment for sedition in the Government edition of the Criminal Procedure Code commented on by us last week, but cannot justify its imposition on the editor of the "Kesari."

We are thankful to our correspondent for affording us this opportunity of further examining the sentence on Tilak. We are sure no strict lawyer—and every penal law should be construed strictly in favour of the accused—will interpret the General Clauses Act to explain or amend the Indian Penal Code. It is no law that amends a penal law by implication. It is no justice that inflicts a constructive penalty. It is not for Tilak that we speak. We speak for law—that punishment be in strict accordance with law.

We may not be wholly right in our view. We think, however, that we have given enough reasons to prove that the law is not clear on the point, and that the condemned is entitled to the benefit of the doubt. If Government see that, through its own lapses or loose interpretation of law, justice has not been done to Tilak, and if the Court inflicting the punishment be unwilling or unable to remedy the wrong, we hope Government will not refuse to exercise the power, given it by Section 401 of the Code of Criminal Procedure, 1882, of suspension of the execution of sentence or remission of the whole or any part of the punishment, even if not disposed to exercise the sovereign's right of granting pardon.

The "*Kesari*" Prosecution.

AN IRREGULAR CONVICTION.

The Fates have marked Section 124A, Indian Penal Code, as their own. Its original was planned, developed and put into shape, when it suddenly dropped from sight. At its revival, Mr. Stephen, after great research, could not account for its mysterious disappearance.. In its new garb, the dropped clause 113 was shorn, without notice or explanation, of its simple imprisoning character. While, agiain, in the Penal Code, it has only "imprisonment," in the schedule of the Criminal Procedure Code, the imprisonment against the section is of either description. A Judge of a High Court heightens the incongruity by making an order according to the schedule of one Code in opposition to the enacting law of the other. The first prosecution, in 1891,—that of the "Bangabasi," in the Calcutta High Court—under the section, resulted in disagreement among the jury, who dividing in the proportion of 7 to 2, the presiding Judge, the Chief Justice Sir Comer Petheram, without expressing his opinion, discharged the jury, saying he could not, in a case like that, accept any but a unanimous verdict. The accused apologising, Government would not proceed with the second trial, being satisfied that the law was sufficient and workable. Sir Charles Elliot wanted, in 1893, to put the law in motion a second time, but was dissuaded from the step by Mr. Woodroffe who was then acting as Advocate-General. He recorded his opinion thus:

I have carefully perused and considered the translated extracts from the publications marked and named in the letter to the Government of India, and am of opinion that none of them—save perhaps one where, by the reproduction from the . . . . of an extract from the United Irishman, Parliamentary agitation is deprecated and assassination apparently suggested, and another two, where the English Government (by which I understand Her Majesty's Government of India) is described as exploiting India for the benefit of Englishmen—contain matter such as to constitute an offence under Section 124A of the Indian Penal Code.

Many of them can, I think, only be considered as hostile, and in some instances ill informed and disingenuous criticism of certain public men and measures in relation to the Government of India, which in some matters at least, as for instance the negociations which preceded the battle of Plassey, Lord Dalhousie's policy of annexation, the position of Tej Sing and Lal Sing in the Sikh war, the British policy towards Kashmir and Nepal, and the annexation of Burma, finds its analogue in the pages of some responsible English writers. Of the remainder, some are either defamatory comments upon Englishmen and Englishwomen, British merchants, England-returned Babus. and Native Christians considered as races or classes of people, or upon individuals, such as Clive, Lord Lytton and Messrs. Newberry and Shuttleworth. Some deal with the matter of cow-killing, and superstitiously attribute famine and other evils from which India suffers to the permission of this practice, whilst others unfavourably criticize Bengalis for their litigious disposition, their habits of intoxciation, and notorious dilatoriness.

On several occasions I have had, in conjunction either with Sir Charles Paul, the Standing Counsel, or Sir Griffith Evans, to consider the scope and meaning of 124A. To the opinion so expressed I adhere. The section furnishes, it cannot be denied, a weapon of most doubtful value to Government. Its meaning is obscure, and by the observations of the Legal Member, Sir (then Mr.) Fitzames Stephen, during its passage through Council it has been so expounded as to render its application to seditions words or writings which do not excite, or attempt to excite, a disposition to resist the law by force most difficult. I refer in particular to the passages in the Hon'ble Member's speeches in Council, to which I have had on previous occasions the honour to direct the attention of Government.

In the first place there must be a seditious intent, as to which I would refer to the charge of Cave, J., to the jury in Regina v. Burns, before the offence described in the section can be committed. That offence is the exciting or attempting to excite feeling of disaffection to the Government of Her Majesty the Queen-Empress in British India. The disaffection contemplated by the section is, as appears from the explanation, such a state of mind

as is incompatible with the disposition to render obedience to the lawful authority in case of unlawful attempts to subvert or resist it. The distinction between the disapprobation of the measures of Government which may lawfully be expressed or be attempted to be excited and the disaffection which it is unlawful to excite or to attempt to excite on which Mr. Fitzjames Stephen justly laid so much stress is emphasized in the explanation.

In a joint opinion given to the Government by Sir Charles Paul, Sir Griffith Evans and myself, and dated the 26th July, 1892, we stated, in reference to the articles from the "Bangabasi" we were then considering—"Throughout these articles there is an attempt to excite in the minds of others the same feeling of fierce hatred of the English Government of India as animates the writer to represent that Government as the persecutor of the Hindu religion, as the cause of all poverty, distress and famine and of imminent ruin, moral, material. to the people. In the last article it is represented that the death of the whole population from starvation must ensue, and that the cause is the Government of India by the English. which is a curse to the country and the bringer of innumerable evils in its train. Coupled with these representations, there are statements that the people are too weak and dissipated to rebel and throw off this hateful yoke, and a suggestion that they would be right in doing so if they could, and indicating that the writer is aware of the possibility of such feelings as he is trying to inflame resulting in the use of force and rioting."

In the extracts which I have above referred to as perhaps containing matters falling within the provisions of Section 124A, whilst there is, I conceive, expressed, though in much less violent terms than were used in the "Bangabasi," the malevolent desire of the writer to kindle in others the hatred towards British rule as the source of evil in India with which he appears to be animated, there is wanting the suggestion contained in the "Bangabasi" as to the rightfulness of an appeal to physical force if and when opportunity should so present. Under these circumstances I cannot say that there is such a clear manifestation of a seditious intent on the part of the writer to excite feelings which, if fully aroused, would be incompatible with a disposition to obey the lawful authority as would, especially after the considerable lapse of time which appears there occurred since the publication of these odious and mischievous extracts, to justify the Government prosecuting the writer. An acquittal would be too detrimental to the interests of Government to risk defeat in such a case, and, I may add in my opinion there is no reasonable prospect of the Government obtaining a conviction were such proceedings taken.

The auspicious year of the celebration of the completion of the sixtieth year of the reign of our good and beloved Queen-Empress Victoria, darkened by the assassination of Rand and Ayerst on the night of the celebration, has been followed by a series of prosecutions under the ill-fated section. They must order the matter better in Bombay. The editor of the "Pratoda" has been sentenced, against the opinion of the assessors, by the Sattara Sessions Judge—Mr. Aston, who received his education in an African College—to the extreme penalty of the section—transportation for life, and the proprietor to 7 years' exile. In the Bombay Sessions Court, Mr. Justice Strachey, agreeing with 6 of the jury, passed, on the editor and proprietor of the "Kesari," a sentence unsanctioned by the section. In the same court and before the same Judge, the trial of the "Vaibhav" ended in, what may be called, a tie. The jury divided into 5 and 4, and Mr. Justice Strachey was obliged to discharge them.

The editor of the "Kesari" has to suffer from a series of blunders and illegalities. The law is positive that there shall be no prosecution under the section without Government sanction. Mr. Justice Strachey seems to think that that sanction need not be a written one. He is evidently for changing the character of the Government in India, which has been described as a Government by paragraphs. We are sure his advice will not be acted upon. No greater disaster could befall the people of this country if Government orders were only verbal. In the complicated machinery of Government, where would the responsibility lie? The section itself is evidence how even a recording department, the legislative, can hopelessly err. Oriental Governments are bad, because, for one thing, of want of record, where every body is master and makes his order entailing no end of misery, without himself being answerable for the mischief. The order for arrest was made by the Chief Magistrate of Bombay, and the arrest of Mr. Tilak, a

Poona man, was made at Bombay, before the sanction to prosecute was filed. The sanction, again, does not specify the article which the accused had to vindicate. Mr. Justice Strachey overruled the objection, on that ground, of Mr. Pugh, the defending Counsel, on the strength of the Bombay Full Bench ruling in Empress *v.* A. Morton and Moorteza Ali, where it is held, as laid down in section 532 of the Code of Criminal Procedure, that an irregular commitment is good, if the court to which the commitment is made considers that the accused has not been injured thereby.

While explaining and answering objections to the draft Act which added sec-124A to the Penal Code, the Law Member gave the assurance which was incorporated in the Act, as section 14, thus:

No charge of an offence punishable under any of the said sections 121 A, 124A, and 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

That section was repealed by Act X of 1872, in which it was re-enacted as section 176 in the annexed form :

No Court shall take cognizance of any offence punishable under Chapter VI (Offences against the State) of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from. the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Section 124A is a part of chapter VI. It being thus transferred from the Penal Code to the Criminal Procedure Code the assurance or the safeguard was weakened by section 532 of the present C. P. C. That section is a part of chapter XLV—Of Irregular Proceedings—a chapter as bloody as Act XLV of 1860. Following the spirit of that chapter, it and many of the previous sections might have been embodied in one section to this effect—An Act a proceeding, or a procedure cannot be good when the accused is injured thereby.

Mr. Justice Strachey refused to be guided by what was said by Mr. Stephen in Council regarding section 124A., I. P. C. Mr. Pugh was not allowed to trace the history of the section or read from the proceedings of Council. Yet the Judge did not hesitate to take up the old Mahratta history and ransack old numbers of the *Kesari* to prove the editor's intention. While disallowing evidence on behalf of the prisoner, he, in his addresses to the jury and the prisoner, travelled out of the record. He would not exercise the right of his own High Court not to be guided by the opinions of other High Courts, but, quoted, incorrectly, Sir Comer Petheram in support of his own interpretation of the law. And, in awarding punishment, he took his cue from Mr. Stephen, who had said in Council :

The punishment required did not vary according to the mode in which the disaffection was excited, but it varied according to the state of public affairs and the position character and circumstances of the criminal; and for that reason the widest latitude in the punishment for the offence was required.

The Judge might have been within the law when he claimed to be guided by his own lights.

Act I of 1868 contained the following provisions :—

Section 7 All Courts of Justice, whether exercising civil or any other jurisdiction, and all persons having by law or consent of parties authority to receive evidence, shall take judicial notice of all Acts and Regulations heretofore made, or hereafter to be made, by the Governor-General of India in Council, the Governor of Madras in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal in Council, or by the like authority in other parts of British India, whether the same be of a public or of a private nature.

Section 8. Any recital contained in any Act of the Governor-General of India in Council heretofore, made or hereafter to be made, shall be deemed by all such Courts and persons to be *primâ facie* evidence of the truth of the fact recited.

These two sections support the view that the Judge should confine himself within the four corners of a law. At the same time, they require Courts to take judicial notice of Acts and to accept, until controverted, any recital in any Act as a correct statement of facts. The spirit of the sections we take to be to enable the Courts to hear, if not to be bound by, what might have been said in Council on any legislative measure. Sometimes it is absolutely necessary to refer to proceedings in Council to understand or to interpret a law. If the hard and fast rule of four corners were never to be relaxed, no humane and beneficent policy of Government enunciated in Council could be given effect to in the courts of the Empire. Would Mr. Justice Strachey refuse to receive in evidence or to be bound by, the Proclamation of 1858 ? On a memorable occasion, Sir James FitzJames Stephen, when he had ceased to be Law Member, had declared that those gracious words of the sovereign were not binding, not being a law and not having passed through the Houses of Parliament. Lord Ripon rose to the height of the occasion and reassured the peoples and princes of India that that truly queenly message could never be a dead letter. If the courts will not give us what Government binds itself by words and phrases, without giving them a particular shape to do, how are we to have them when Government is misled to act otherwise ?

We do not see how Government could back out of its position by not acting to the assurance of the Law Member. The Judge might not be bound by the proceedings in Council. But how could Government, ignoring its own pledge, take advantage of its own wrong—the infringement, even if unintentional, of the pledge? The Penal Code is so vaguely and comprehensively worded, that one much inferior in cunning to Cardinal Richelieu, can, with the aid of the irregular Criminal Procedure Code, in one year, work the Code to death, transportation and imprisonment of half the population. It was the boast of the Cardinal that in four words of writing, even on any indifferent subject, he could find cause for putting the author into the Bastile. Convinced of the emptiness of the boast, one wrote the words—"Three and one make four." "Three only are one," cried the Cardinal, "this is blasphemy against the Holy Trinity—away to the Bastile."

The Hindu (*English Daily*) Madras, September 15th.

A representative of the *Hindu* availed himself of the opportunity of an interview with a distinguished Jurist. Our representative was received with every mark of courtesy, and the distinguished visitant was remarkably condescending, in fact, as freely communicative as any eager pressman might wish, and both forthwith plunged into a very interesting dialogue upon the most remarkable trial of modern times in India.

"Now, let me first have your views about the constitution of the Court itself," queried our representative: "Do you think that Mr. Justice Strachey could properly preside over a trial of this nature"?

"I understand you. It is my opinion that the constitution of the Court has not been one very much conducive to a proper investigation of this particular case. The case is a remarkable one in several ways, and a very great deal of public excitement

has been caused by it. I think, therefore, that the Court to try this case should have been appointed with greater care. Mr. Strachey is hardly the person to try it. He is a comparatively new man, and has no acquaintance with the Marathi language, and the articles which form the basis of the prosecution are in Marathi."

"Whom then would you have! Only one Judge usually sits at the Sessions, and a Native Judge would surely not be allowed to sit and try a case like this."

"True. But then there is nothing to prevent two Judges at the Sessions if they chose. It is a mistake to suppose, as doubtless it is very largely supposed, that only one Judge can preside at the Sessions. It is perfectly legal for two Judges of the High Court to sit, and on such occasions the Senior Judge delivers the charge to the Jury. In this case, considering its peculiar circumstances, public confidence could very well have been satisfied if two Judges had sat. The Chief Justice and Mr. Justice Ranade would have constituted a Court perfectly competent to conduct the trial from all standpoints of view. The Chief Justice has a knowledge of the country, the habits, customs and sentiments of the people, and perhaps also of the languages of the Western Presidency, while Mr. Ranade's knowledge of Marathi which is absolutely necessary for the proper interpretation of the passages complained of, will greatly help the Chief, and both would have constituted a Court eminently qualified to do full justice to the requirements of the case. The lack of these qualifications has rendered the proceedings of the last few days highly deplorable. The Judge has been able to exercise but little control over the conduct of the trial, and he appears to have left it to drift for itself."

Questioned as to the way in which the prosecution has been conducted by the Advocate-General and the general merits of the case as it went to the Jury, the learned Jurist expressed the opinion that it was one of the weakest cases that ever was submitted to a Jury. If it was a strong Judge that presided, and the Jury an equally strong body, the case should have been dismissed in its incipient stages. The subject matter of the prosecution was certain writings in Marathi, and all concerned, the Judge, the Jury and Counsel, were absolutely innocent of any knowledge of it. The accuracy of the official translations were questioned, and there was nobody to decide the correctness or otherwise of it, at any rate, so far as the trial proper was concerned. Every one was in doubt. The presumption to judge the guilt or innocence of the accused respecting passages which no one concerned understood, especially in a case of this moment, was extremely absurd and farcical, and prejudicial to the interests and reputation of all parties.

Our representative felt inwardly elated at the condescension of so distinguished a forensic luminary, as he, quite contrary to expectation, allowed himself to be dragged into such a deep and interesting discussion of the case and proceeded to give his opinions without the least restraint.

"Quite apart from these considerations," he continued, "the very nature of the case demanded that special arrangements should have been made to secure public confidence as well as a satisfactory trial. Section 124A is one newly imported into the Penal Code.

Amrita Bazaar Patrika (Legal), 22nd September 1897.

THE REAL SITUATION.

In the case of Mr. Tilak, Mr. Justice Strachey said in the same breath that disaffection meant "want of affection" as well as "disloyalty." In the *Vaibhav* case, Mr. Lang, the Advocate-General, also contended that there was no difference between disaffection and disloyalty. Clearly the word at the utmost cannot mean anything more than disloyalty. But what is the meaning of disloyalty? Webster says—"Want of loyalty," "violation of allegiance" What again is loyalty? It is thus defined in Webster—"Loyalty properly expresses that fidelity which one owes according to law, and does not necessarily include that attachment to the royal person which we in England have been able further to throw into the word." Thus loyalty does not essentially include the idea of affection or attachment to any person. Neither does the word "allegiance" express that. For the meaning of "allegiance" is given by Webster as being the "tie or obligation implied or expressed, which a subject owes to his prince or governor." Thus disloyalty which Mr. Justice Strachey and Mr. Lang contended to be the meaning of "disaffection," is breaking the tie which exists between a subject and his Governor.

Evidently the framers of Section 124A took the same view in practically laying down that incompatibility with a disposition to obey the Government was the test which determined what amounted to disaffection within the meaning of the section. In short, the framers of the section explained that feelings of disapprobation or of censure or dislike were not disaffection within the meaning of the section until they had gone beyond the point at which such feelings of censure or dislike were compatible with obedience to Government; in other words, until they amounted to throwing off the allegiance which a subject owes to the Government.

Amrita Bazaar Patrika, 30th September 1897.

Further details of the application of Mr. Tilak in connection with the Privy Council appeal are published in another column. It will be seen that Mr. Justice Strachey climbed down from the original position he took with reference to his interpretation of Section 124A. He had to acknowledge that the meaning he gave to the word "disaffection," namely, "absence of affection" was not a happy one. Now, is not this admission on his part quite enough to show that the jury were not properly directed? As a matter of fact, an eye-witness, who was present at the court, assures us that he saw one of the European jurors writing on a piece of paper, during the delivery of the charge—"disaffection means absence of affection;" and surely he had no help but to convict, as there is no strong expression, however innocent, which cannot be construed to mean "absence of affection."

The Gujarati, Bombay, Sunday, 26th September 1897.

We propose to show this time that the learned Judge has erred in his construction and to indicate what the law of sedition really is in India.

Section 124A of the Penal Code enacts that—

Whosoever by words, either spoken or intended to be read, or by signs, or by visible representations or otherwise, *excites or attempts to excite* feelings of *disaffec-*

tion to the *Government* established by law in British India, shall be punished with transportation for life, or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation.—Such a disapprobation of the *measure of the Government* as is *compatible with a disposition to render obedience* to the lawful authority of the Government *and to support the lawful authority of the Government against unlawful attempt to subvert or resist that authority* is not disaffection. Therefore, the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause.

The italics in the above are ours.

Now the first question is what are "feelings of disaffection"? The Hon. Mr. Justice Strachey says:—"I agree with the late Chief Justice of Bengal, Sir Comer Petheram, that *disaffection* means simply the *absence of affection.* It means hatred, enmity, dislike, hostility, contempt and *every form of ill-will to the Government. Disloyalty* is perhaps the best general term, comprehending *every possible form of bad feeling to the Government . . . . He must not make or try to make others feel enmity of any kind towards the Government. You observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment.* If a man *excites* or *attempts to excite* feelings of disaffection, *great or small*, he is guilty under the section." Now in the first place Sir Comer Petheram has nowhere said in the "Bangobasi" case that *disaffection* is the *absence of affection.* What he had said is that it indicatos a feeling *opposite* to that conveyed by affection. In the second place the learned Judge is wrong in laying down that the section has nothing to do with the degree or intensity of disaffection, if this is to be construed as every form of ill-will or bad feeling. The section must be construed as a whole. The substantive part cannot be construed in detachment from the Explanation. Disaffection is a certain bad feeling towards Government. So is disapprobation even as qualified in the Explanation. The substantive clause enacts that the first is punishable, and that the second is not. Even as the two terms are ordinarily understood, it is perfectly correct to argue that every form of disaffection is disapprobation, but that every kind of disapprobation is not disaffection. If this were not so, there would be no distinction between disapprobation and disaffection. The question then arises—What is the line of demarkation between *punishable* disapprobation, *i. e.*, disaffection referred to in the substantive clause, and *non-punishable* disapprobation as defined in the Explanation? Taking disapprobation as the *genus*, and disaffection as *species*, what is the *differentia* which, when added to the *genus*, defines the *species?* For instance, *animality* plus *rationality* distinguishes *man* from *animal*. So the Explanation, put positively, says that *disapprobation* plus its *incompatibility with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government* is *disaffection.* In other words *punishable disapprobation* or *disaffection* is *incompatible* with such a disposition to render due obedience, and *non-punishable* or *protected* disapprobation is *compatible* with such a disposition. Of course, when disaffection, as thus defined, does exist, its intensity is immaterial. But it is a great error to suppose that *every possible form of bad feeling to the Government* or *every degree of ill-will* is *disaffection.* The Explanation defines *disaffection per genus et differentia*, and the learned Judge has failed to understand it in that light. There can

be little doubt that his Lordship has erred in not construing the section as a whole but in treating the *explanation* just as if it were an *exception*. If it were an *exception* as the term is understood, then we might expect the legislature to lay down that some forms of *disaffection* are protected, which, even according to his Lordship's interpretation of the section, would be utterly absurd ; because, as we have observed above, if there is *disaffection*, that is, a feeling incompatible with a disposition to render obedience, it must be punishable under the substantive clause. When the Explanation lays down that a certain kind of *disapprobation* and not *disaffection* is not punishable, surely it cannot be construed as an *exception* proper. This initial error on the part of the learned Judge has necessarily led to the misintepretatin of the whole section. If his Lordship had treated the Explanation as explanation proper, and then determined the definition of *disaffection*, in the light of the Explanation, he would not have laid, as he has, unwarranted emphasis on the expression *measures of the Government*, as contra-distingusihed from the *Government* itself. According to him the test is whether the comment is against the *measures* of the Government or against the *Government* itself. It the former, apply the Explanation and find out if the criticism is compatible with a disposition to render obedience. If it is compatible, it is not punishable, otherwise it is. If the comment is against *Government*, then it is punishable under the substantive clause, because adverse criticism must necessarily create some feeling of ill-will against Government. This extraordinary and startling result is due directly to the fact that the learned Judge has failed to comprehend the precise co-relation of the Explanation to the substantive clause that precedes it, and has travelled outside the section to ascertain the meaning of disaffection, when a closer examination of the same would have shown that the legislature has not left Courts quite helpless or without any guidance in the matter.

The definition of disaffection, which we have sought to deduce from the section as a whole, is in entire accord with the views of the Law Member, Mr. Fitz-James Stephen, who, in presenting the final report of the Select Committee, in 1870, observed:—

"The section provided that anybody who attempted to excite disaffection might be punished, but it insisted on the distinction between disaffection and disapprobation. It expressly provided that people might express or excite disapprobation of any measure of the Government, that was compatible with a disposition to render obedience to the lawful authority of the Government ; in other words, you might say what you liked about any Government measure or public man ; you might publish or speak whatever you pleased, so long as what you said or wrote was consistent with a disposition to render obedience to the lawful authority of Government. *Let it be shown that the matter complained of was not consistent with the disposition to obey the law; let it be shown that it was consistent only with a disposition to resist the law by force, and it did fall under this section. Otherwise not.*"

Before we proceed to show how the distinction drawn by the Judge between an attack on the *measures of the Government* and on the *Government* itself is of an unreal and unsubstantial character and what serious consequences it will lead to, it is necessary to point out that the Hon. Mr. Justice Strachey is not right in saying that *disaffection* means *absence* of affection. The very use of the word *excite* in the section proves beyond all doubt that the learned Judge is wrong in so understanding disaffection. The word *excite* is derived from *excitare* = *ex* out + *citare* to rouse. It means to call to activity, to rouse into action, to kindle, to passionate emotion, to stir up to combined or general activity, to stimulate, to inflame. When we *excite*, we rouse into activity feelings which were less strong ; when we *excite*, we spur on or urge forward to a specific act or end. Thus Demosthenes *excited* the passions of the

Athenians against Philip, and thus *incited* the whole nation to unite in the war against him. In the light of this explanation of the word *excite*, it becomes impossible to look upon *disaffection* as *absence of affection*. It must connote the existence of some bad feeling. There is a wide gulf between the absence of bad feeling and its presence, and between its absence and presence in an aggravated form which alone, as we have shown above, is punishable under the Penal Code. Several English writers have pointed out that British Government need not expect sentiments of love and affection from the subject people. But this does not necessarily mean that they are always in a *disaffected* frame of mind. A might entertain no feelings of affection towards B. But that does not mean that he feels hatred or contempt for him. Similarly one person might express even strong disapprobation of another's conduct. But that does not justify the inference that he is hostile to him. The Liberal party has no affection for the present Conservative government. Does that prove that the Liberals are disaffected towards the latter ? Generally speaking the attitude of the people of India towards British Government, as regards its policy affecting Great Britain, is absolutely neutral or colourless. Can it be described as *disaffected ?* To treat absence of affection as being equivalent to the existence of some positive bad feeling is a mistake *ab initio*, and then to treat this bad feeling as being tantamount to *disaffection* is a still greater mistake. Our readers can, therefore, very easily understand how the learned Judge has been misled into arguing that *every conceivable form of bad feeling is disloyalty* or *disaffection*. He has not borne in mind that there is a border-land between the existence of a quality and its opposite, and that there is a large interval to be traversed between the existence of some bad feeling and what is punishable as *disaffection* in the Penal Code.

The learned Judge has drawn a distinction between criticisms directed against *the measures of the Government* and those aimed at the *Government* itself. As we have remarked above, this distinction is due to the treatment of the Explanation as an exception. If his Lordship had correctly understood the aim and object of the Explanation as only defining and emphasising the degree or intensity of the disapprobation that is or is not punishable under the section, he would not have laid undue stress on the expression *measures of Government* and contrasted it with *Government*. The true construction of the section shows that this contrast is unsound. On principle also this distinction is quite untenable. In a country like India, which has, for centuries, been under foreign yoke, there is not much room for complaint against the existence of an alien Government. What might furnish or does afford ground for dissatisfaction is its general policy and constitution. To exclude these from the scope of discussion would be to stop all political progress in this country. The existing system of administration is open to the serious objection—an objection which has been over and over again re-iterated by Mr. Dadabhai and even English statesmen—that it is too exclusive and that it shuts out native talent from higher posts in all the important branches of administration. To point this out or attack this feature of British policy in India is an attack on an essential characteristic of British Government in this country. According to the interpretation of Mr. Justice Strachey it would be punishable under the Penal Code, as it would be impossible to avoid creating some ill-feeling against *Government* in the discussion of this question. Such a doctrine would be simply monstrous. It would remove perhaps the foremost plank from the Congress platform. It would be an offence to dwell upon the alleged tendency of British rule in India, to foster and promote English or imperial interests at

the expense of India, to impoverish the country, to cripple its moral and material resources, to discourage native arts and industries, to increase the burden of taxation in general, or to accuse Government of indifference to the welfare of third-class railway passengers, and of the agricultural classes or the ryot in general, or to attack the general system of finance or revenue or taxation as distinguished from the *acts* or *measures* of Government. Because the learned Judge says:—

"This shows that the Explanation has a strictly defined and limited scope. Observe that it has no application whatever unless you come to the conclusion that the writings in question can fairly and reasonably be construed as the making of comments on the measures of the Government. It does not apply to any sort of writing except that It does not apply to any writing which consists not merely of comments upon the Government measures but of attacks upon the Government itself. It would apply to any criticisms of legislative enactments, such as the Epidemic Diseases Act, or any *particular* tax, or of administrative measures. . . . . But if you come to the conclusion that these writings are an attack not merely upon such measures as these but upon the Government itself, its existence, its essential characteristics, its motives or its feelings towards the people, then you must put aside the Explanation altogether, and apply the first clause of the section. . . . . *This distinction is the essence of the section*. . . . . He may express the strongest condemnation of such measures, and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the Explanation. But if he goes beyond that and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers, as, for instance by attributing to it every sort of evil and misfortune suffered by the people, or dwelling advisedly on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people, then he is guilty under the section, and the Explanation will not save him."

That the distinction, which the learned Judge regards as the *essence of the section* is not well founded may be further proved by showing that it is impossible to draw any tenable distinction for the purposes of this section between Government in the abstract and its measures in the concrete. Because an attack on the *measures* of Government must necessarily create some ill-feeling against *Government*, and it is impracticable to avoid it in pronouncing adverse criticism upon their acts. Ignorant people find it difficult to understand the measures of Government apart from the Government. The acts of individual officers are, it is well-known, ascribed to Government and their orders are treated as those of the *Sirkar*. If bad feeling or ill-will, thus generated, is allowable under the Explanation, why should it, when occasioned by a criticism of the *general* policy and constitution, the tendency and attitude, the motives and intentions of Government, be punishable under the first clause? This confusion is due to the failure on the part of the learned Judge to discover any standard for determining the *quantum* of bad feeling which alone is or is not punishable under Section 124A. As we remarked last time, the constitution and the very existence of the India Council has been indignantly attacked several times by Anglo-Indian and Indian writers and politicians. This is not an attack upon any measures of Government, but upon an integral part of the governing machinery. Will his Lordship explain on what principles of reason, statesmanship, justice or law should such criticism be excluded? There is another objection which is quite fatal to the distinction which the Hon. Mr. Justice Strachey regards as the *essence* of the section. According to his

explanation of the law of sedition in India, the Penal Code refers to comments on the *measures* of Government and on the *Government* itself as defined by him. Now what about criticism on *omissions* as distinguished from *acts* or *measures*, on the part of Government? Times out of number has the native press complained that the British Government has omitted or neglected to carry out certain reforms or promises. Mr. Dadabhai and others have from time to time declared that most of the promises and pledges of the Queen's Proclamation have remained a dead letter. That is not a criticism on the essential characteristics of Government nor on the measures of Government. What is the provision in the Penal Code to cover bitter denunciations of such omissions or neglect? Are they protected? If the Hon. Mr. Strachey's interpretation is correct, they must be, because they do not fall strictly within the substantive clause or the Explanation. If they are included within the scope of the former, then it must be admitted that the '*essential*' distinction is really artificial, illogical and untenable. But they cannot be so dealt with, because that would be enlarging the scope of the first part of the section beyond the limits laid down by the learned Judge. Nor can they be covered by the Explanation, because *omissions* are not the same as *acts or measures*. But the Legislature could not have excluded comments on these omissions. If so, what his Lordship regards as the essence of the section is really no essence at all, and if Section 124A is construed as a whole in the light of the Explanation, as we have done above in attempting to define *disaffection*, then all these difficulties altogether disappear and the section becomes capable of rational and consistent application to any proposed set of facts. Whatever the difficulties in applying the section to any particular circumstances, it may be expanded into two clear propositions :—

1. Disapprobation *plus* compatibility with a disposition to render obedience to the lawful authority of Government is not disaffection.

2. Disapprobation *plus* incompatibility with a disposition to render obedience, &c. . . . . is disaffection.

The above propositions are in accordance with the views of Sir Comer Petheram, who observed in course of his charge to the Jury in the *Bangobasi* case :—

If a person uses either spoken or written words calculated to create in the minds of the persons, to whom they are addressed, *a disposition not to obey the lawful authority of the Government, or to subvert or resist the authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers*, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words, or any feeling of disaffection, in fact, produced by them.

Sir John Strachey in his speech on the Vernacular Press Act remarked :—

It has been proved by long experience that the existing law is altogether insufficient to supply the necessary check on these productions. . . . The honest journalist has nothing to fear from the present measure. He will be as free, as he has ever been, to give expression to his opinions, to discuss the action of the Government and its officers, *to advocate those measures and doctrines of which he approves*, and to censure those that he condemns. The limitations under which he may do this will, in no respect, differ from those that apply in England. I cannot describe those limitations better than by quoting the words in which a distinguished English judge stated the law on this subject a few years ago.

'The public journalist,' he said, 'is entitled to canvass the acts, the conduct and the intentions of those who may be entrusted, from time to time, with the administration of the Government by the Crown. He is entitled to canvass and, if necessary, to censure those acts. He is entitled to comment on, canvass and, if necessary, censure the proceedings of Parliament. He is entitled to criticise and condemn the acts of public men. He is entitled to point out any grievances which he may think the people labour under, and argue for their removal, and suggest what remedies may occur to him for the purpose. He is entitled not only to publish, but to comment on, to criticise, and, if necessary, to condemn the conduct of judges and their decisions; nay, more, even the verdicts of juries are not exempt from fair and reasonable criticism.

'. . I have told you within what limits a journalist may exercise his opinion and his talents; but I should tell you also the things which he is not permitted by law to do. *He must respect the existence of the form of Government* under which he enjoys and exercises those very extensive rights and privileges to which I have referred. A public journalist must not, either covertly or openly, devote the pages of his journal to overthrow the Government.'

The Weekly Review, Sunday Evening, 26th September 1897.

THE HONORABLE MR. TILAK'S CASE.

STRACHEY LAW.

It would be difficult to believe that their breadth of view was any difficulty in the way of Anglo-Indian rulers of the type of Lord Harris of Bombay and Sir Charles Elliot of Bengal. Yet that would seem to have been the case. Their complaint about the insufficiency or unworkableness of Section 124A of of the Indian Penal Code would not have been possible, had they known that it could be interpreted in the way in which Mr. Justice Strachey has interpreted it in the Hon'ble Mr. Tilak's case. Or, in other words, in their most ferocious moments, when how to teach a bitter lesson to the Native Press was their one thought, they did not dream of construing the section in such a manner as to draw the noose tight round the throat of every Pressman in the country—let alone the sedition-monger. It could not have been that they were unwilling to do so. Evidently they were used to a way of understanding that was much too liberal for it. Mr. Justice Strachey labours under no such disadvantage. And to him is due the credit of showing what a terror Section 124A can be made to unwelcome or obnoxious writers—or what protection it affords to nervous executives, or opportunity to irate or vindictive ones.

In the course of his charge to the Jury, Mr. Justice Strachey said that the object of the Explanation appended to Section 124A "is to protect honest journalism and *bonâ fide* criticism of public measures and institutions with a view to their improvement and to the remedying of grievances and abuses." No doubt that is so. But we should like to know how the object can be realized if the section and the Explanation appended to it are to be understood as they have been understood by his Lordship. According to him, disaffection *is* absence of affection, enmity, dislike, hostility, contempt and every form of ill to the Government; and what is *not* disaffection *but* di-

approbation is commenting upon measures of Government without attacking the Government, "without holding it up to the hatred or contempt of his readers, as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people." If it is so, is it possible for any journalist, or critic, however honest, to criticise or comment adversely on any measure of the Government without laying himself open to the charge of having excited or attempted to excite disaffection under section 124A of the I. P. C.? Measures, not men—is a dictum that can have no place in our dealings with a Government. Men may have two existences so to say—as private men and as public men. The duties of men as officials are not the same that they have to discharge as private men. So, in the case of individuals, a distinction is possible—nay, is easy—between public character and private character. And a critic or newspaper man can, as he is bound to, condemn an individual's official acts without implying a slur upon his personal or private character. But this is not possible in the case of a Government. Government as Government has no personality or privateness so to speak. And you cannot condemn any particular act or measure of its, without implying some condemnation of it. Mr. Justice Strachey mentioned several measures of Government as among those upon which any amount of severe criticism could be based. The income-tax and the suppression of the plague are two of these. Now, is it possible to say that the income-tax is oppressive without meaning, or creating the impression, that the Government is oppressive. Nobody will understand us to mean, of course, that the Government is oppressive in the sense that it is always so, or that it is characterised by oppressiveness. But everybody will, has a right to, understand us to mean that the Government is oppressive in regard to the imposition of the income-tax. So, also, when we say that the way the plague was suppressed was not satisfactory, we imply a certain amount of culpability on the part of the Government, in that it took no notice of people's feelings and complaints. The very fact that the plague measures in Poona created the tension of popular feeling that they are admitted to have created, is proof that any sharp line of demarcation between the Government and its measures is not possible. Every blunder or bad measure is bound to tell against the Government to some extent, however small. And, consequently, every bit of criticism of the measures of Government is bound to affect the reputation of the Government for its fairness, justice, or humanity. There is, of course, a vast difference between the kind of feeling that the criticism of, or comments on, a bad or unpopular measure of Government must cause, and that which leads to "unlawful attempts to subvert or resist that authority." We all condemn the frontier policy which swallows up four crores of rupees a month at a time when the people are in acute distress as a result of the famine and plague. We all feel bitter, on that score. But that does not by any means mean that we wish to subvert the Government. On the other hand, it is our wish for the permanency of British rule that makes us so anxious to have its defects remedied.

The fact of the matter is Mr. Justice Strachey has been too illiberal in his interpretation. He did not even take note of the intermediary stages between affection and hatred. If disaffection is hatred, it cannot be absence of affection merely. In other words, want of affection does not necessarily mean hatred, or enmity. It may be indifference, or hatred. Besides, as we have already pointed out, there are dislikes and dislikes or, hatreds and hatreds. Our dislike for, or hatred against, the

Government for a particular act or measure of its, is not incompatible with our love for it as a whole. We know it to be the very best Government we have ever had to do with—and we could not have a better. Yet, and on that very account, we feel bound to criticise strongly its occasional mistakes and failures. Nor can there be any manner of doubt that it is wholesale hatred against the Government—hatred against it as a whole—hatred that could find satisfaction only in the subversion or extinction of the Government, that the authors of section 124 A. had in view in speaking of disaffection. The explaination appended to the section makes that perfectly clear. If the word "disaffection" was meant "to comprehend every possible form of bad feeling to the Government," no criticism could be made which did not create some sort of bad feeling, as we have shown, and, so, there could be no protection to honest journalism, or *boná-fide* criticism; and there would have been no necessity either, for making pointed allusion to "unlawful attempts to subvert or resist." If the exciting of, or the attempt to excite, every possible form of bad feeling against the Government, was to be punished, why should only that form of it which finds vent in "unlawfull attempts to subvert or resist" find mention in the explanation ? In fact, in such a case, where would have been the necessity for the explanation? If words have any meaning, section 124A. and the explanation to it can only show, that the framers of them were quite aware of the fact that no disapprobation could be expressed without creating some bad feeling, and that they meant the difference between disaffection and disapprobation to be one of degree merely—that disapprobation carried to the extreme, or, in the wording of the explanation, that was not "compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, was disaffection.

STRACHEY WAY OF DIRECTING THE JURY.

Now, turn to the other parts of Mr. Justice Strachey's charge to the Jury. His Lordship warned the Jury against judging hastily. They were not to ask themselves "what would be the effect on the minds of those who read the articles in a London drawing-room, or those who sat reading them at the Yacht Club in Bombay, but what * * * * * * * would be the probable and likely effect on the minds of those readers of the *Kesari* among whom the articles are circulated and read." And the readers of the *Kesari* were "ordinary" Hindus. If they were liable to be profoundly excited by occurrences like the plague and the famine, they were also very peace-loving and fate-believing. His Lordship forgot to mention the latter fact though he took care to mention the former. That is not our present point however. If the Jury were to judge of the effects of the *Kesari* articles on the ordinary run of Hindus, superstitious and excitable to a degree, were all of them competent judges, we ask? What knowledge, did the six European jurors on whose verdict Mr. Justice Strachey has condemned Mr. Tilak, have of the manners and feelings and thoughts of such Hindus? The most sympathetic of Europeans, with the advantage of a life-long acquaintance, fail to understand us oftentimes. If so, what guarantee was there that the six Europeans, of whom we could not even be sure that they were in touch with ordinary Hindu thought and feeling, would judge, and did judge, rightly?

Again, as we have always understood it, a Judge is bound to confine himself to the evidence before him. He has no right to make use of any information he may have become possessed of, outside the court. A Judge, properly so called, could

make no presumptions. Yet how many presumptions did not Mr. Justice Strachey hazard in the course of his so called summing-up? And how often did he not travel beyond the evidence before him? His account of Shivaji was much fuller or more elaborate than the Advocate-General's. His description of the state of things which culminated in the murder of Lieutenant Ayerst and Mr. Rand was much more vivid and official. And nowhere in Mr. Lang's address do we find anything least like his Lordship's insistence on the grouping together, in the article headed "Shivaji's utterances," of all the topics "which go to make up the sum total of the misery which exists under the British Government and which did not exist in the time of Shivaji." Nowhere, too, do we come across an attempt, in the Advocate-General's address, to condemn Mr. Tilak's speech at the Shivaji celebration in the light of, or on account of, the sort of people to whom it was addressed. There is no objection to a discussion about the justifiability of Afzul Khan's murder, said his Lordship, provided you broach it to the right sort of people. The readers of the *Kesari* were presumably not the right sort. We will admit it. But how could such a discussion have been avoided at a Shivaji celebration, when the thing that had been again and again trotted out by historians to discredit Shivaji was the way he put an end to Afzul Khan's life. And even Mr. Justice Strachey could not suggest that the speech was not made at a meeting held in honour of Shivaji's memory, though he managed to ignore it and make it appear as though it was uncalled for, or made without any occasion for it, simply to excite an already excited populace.

We will not weary our readers with noticing the various points, in Mr. Justice Strachey's summing up, which prove his want of proper judicial temper and mind. It is enough to say, that Mr. Justice Strachey should have been in Mr. Lang's place and the latter in the former's. Then, Mr. Tilak would have had the benefit of a fair summing up and an impartial verdict. As it was, he was condemned on the strength of a very partial statement, in which the weak points alone of the defence found mention.

PART II.—GENERAL ASPECT.

Section (a)—Indian Press.

The Hindu, English Daily, Madras, September 15, 1897.

THE CONVICTION OF MR. TILAK.

The conviction of Mr. Tilak has cast a gloom over the whole country. The news has been received everywhere with intense grief and with a sense of humiliation. It is not that law and justice have been vindicated, but that the policy of reaction which for some time the enemies of the Indian people have been urging, has triumphed. It has been the great object of these unscrupulous men, whose one aim is to keep the people of India in a condition of slavery, to strike a crushing blow at the party of progress, and now they have succeeded in their object. They have succeeded in producing depression and despair everywhere. The British Government in India would appear to have taken leave of its old traditions of freedom, benevolence and popular sympathy, and have fallen entirely into the ways of irresponsible reactionaries; and British Indian statesmen would appear to feel ashamed of the noble aspiration of helping in the regeneration of the fallen and ancient races of India, which inspired the policy and measures of their predecessors. The end of Government, we have been told by an eminent British statesman, is to enable people to live well; and this end was kept in view when a generation or two ago Englishmen laid the foundation and raised the first floor of an imperial edifice in India. But the spirit of our rulers has changed. The end of Government is no longer what representatives of the loftiest statesmanship of Britain has said it should be, to help people to live well and work out their own regeneration. Government is now satisfied with other ends and other objects. How to keep down the people and at their expense to advance a small but favoured community seems to be the end. Knowing people has expected this *denouement* for some time. They were aware of the immense influence which the enemies of Indian progress were able to wield in England and a favourable time was only wanting for them to attain their mischievous ends. The Government of India is at present under the direction of a statesman singularly wanting in strength, and in England the party of reaction and repression, the Tory Party, is in power; and to make the situation worse, Lord George Hamilton is the Indian Minister. The Liberal Party is in a disorganised and demoralised condition, without a great leader to inspire and guide it. The voices that used to plead with noble eloquence for liberty and progress are hushed, and so far as this poor country is concerned, wise statesmanship has abdicated in favour of unprincipled aggression which, in the name of Imperialism, would trample on the so-called inferior races, and consign them to a state of perpetual servitude. The time was peculiarly favourable for the success of this party of reaction in India, and in the conviction of Mr. Tilak the country beholds the beginning of a most mischievous and most deplorable struggle between the Indian people and their enemies in their own country—for, they have enemies who are very powerful, who have free access to the rulers, and who command the service of the Tory Press in England. There will be rejoicing among them, no doubt. In their press, they will taunt the educated classes, sneer

at them, vilify them, and, heap abuse and humiliation on them. They will boast of their strength; and mock the Indian people for their dreams of liberty and political power. The feeling between the two races will become more bitter than it ever has been in the past. When the prosecutions were started more than two months ago, we expressed our regret that they were started at a time when the feeling of Englishmen was so strongly prejudiced against educated Indians. We said it was impossible that under such a feeling Englishmen could judge impartially, or leniently, of the criticisms on British Government by the Indian Press. The recent convictions have more than justified the apprehension we then expressed. The monstrous sentence of transportation for life passed by the Sessions Judge of Satara, and the absurd verdict of the European jurors in Bombay, will appear in the public mind quite unintelligible otherwise. The great principle of trial by jury is valued for the opportunity it gives to the accused to be tried by his own countrymen. But in India this principle is often made a farce, and the principle is turned more often against the accused than in his favour. In the present excited state of public feeling and in the face of the ceaseless torrent of abuse and vituperation from the Anglo-Indian Press, no sane person could have expected an impartial verdict from English jurors, and the unfortunate reference to the murders of the Jubilee night, which both the counsel for prosecution and the judge made in a quite out-of-the-way manner, must have tended to aggravate the prejudice in the minds of the English jurors. To the Government the conviction of Mr. Tilak is the vindication of its authority and prestige, but to the people it is a national misfortune. The case has created universal interest, because it embodies the struggle between progress and reaction, between popular liberty and official despotism. For the moment, reaction has triumphed against progress, and despotism against liberty. There is not one Indian family throughout the country where the news of Mr. Tilak's conviction would not have been received with the most depressing grief. Nothing has happened during these forty years to remind the people of this country more of their abject helplessness and to give more poignancy to their consciousness of their political subjection than the recent doings of the Bombay Government. To their rulers they can appeal; but instead of giving them a patient and sympathetic hearing to which they are accustomed, the rulers now choose to smite them with an iron rod. All commisseration for their suffering, for their condition of utter prostration before a combination of all possible calamities has disappeared; and the folly and apathy of our own leading men have disheartened the few friends that we have, who now perhaps are disgusted with us in the belief that we as a people are past praying for. It was all these that Mr. Lamb evidently meant when he threatened the people of Poona in his memorable durbar that Government had resources of which they were not quite aware and with which it could completely smash them. And, we confess, completely smashed we are. For some time, at all events, Government will have nothing but flattering comments, but we do not know if it has so far lost its common sense, as to believe that whatever ill-feeling there might have been till now against Government, has been rectified by its recent measures. The *Madras Times* never made a wiser observation than it makes this morning in commenting on Mr. Tilak's conviction. "It is not on lip service," our contemporary says, "that a Government prospers, and even though for a time the vernacular press may be prudent enough to keep its strictures on Government within very safe lines, the same spirit will be there, even less friendly than before, and disaffection will certainly not have been excised by Tilak's trial." The mischief has been done.

The progress of the people has been pushed back fifty years. The next aim of our enemies is the National Congress, which they want to see stamped out; and we do not know if between the *Pioneer* and the London *Daily Mail*, sufficient pressure will not be put on Lord George Hamilton to move the executive machinery of India to bring about the arrest of its leaders for sedition, and proscribe it altogether. But will not our responsible rulers open their eyes? Will they not see that they are unnecessarily worrying a people who are most loyal but thoroughly helpless. We implore the Government to forbear and stay its smiting hand, and try a policy of generous sympathy and confidence instead of the present one of terror and suspicion. Certainly India is not to be made a scene of perpetual unrest among the people, fed by a growing distrust between the rulers and ruled in deference to the clamour of a handful of adventurers who want to build their own prosperity on the ruin of the people and whose cry for the avengement of the Jubilee murders has brought all these troubles.

The Hindu, English Daily, Madras.

THE SENTENCE OF MR. TILAK.

FEELING IN MADRAS.

Few people outside the native community can have any idea of the feeling that has been aroused by the news of Mr. Tilak's conviction even in Madras. A description of the scene in our office on Tuesday evening may perhaps tend to convey some impression, however vague, of the extent of anxiety that had been caused in the minds of the native community as to the result of the trial. From an early hour in the afternoon enquiries began to pour in as to the nature of the latest telegram from our special correspondent in Bombay. Passers-by in Mount Road peeped in at the *Hindu* office, eager to catch a glimpse of the latest news. It was cruel to keep the anxious enquirers in suspense, and we so arranged that the telegraphic intimations coming in from time to time about the progress of the trial were set in type immediately as they were received, and posted in slips outside our office. When it was known that the Judge had been summing up during the whole of the morning and had resumed even after tiffin, it was understood that the Judge would soon cease speaking and that the fate of the Hon'ble Bal Gangadhar Tilak would be decided before the rising of the Court. The crowd below in front of our office grew thicker and more restless. Higher up in the verandah were gathered a large number of people, including many distinguished gentlemen of the Native community, and the faces of many of them as they calculated in their minds the time that would be occupied by the various stages of the proceedings from the commencement of the Judge's summing-up until the time of the Court's rising, in the absence of the eagerly-awaited telegram intimating the result, would have afforded a veritable study in physiognomy for an observer of human nature. Hour after hour passed; the crowd grew thicker and thicker; no telegram came. The people grew more and more restless; some stayed in restless anxiety; others straggled on in disappointment. Many a man in red turban and khaki uniform was mistaken for a telegraph peon and was run after, and the subsequent disappointment was in each instance clearly perceptible among the crowd. Weary of waiting, a portion of the crowd went to the Telegraph office. The General Post office at the Beach, we learn, was likewise crowded by a large number of students and other eager people during the evening. A run up the staircase at length announced the arrival of the

telegraph peon followed by an eager crowd on his trail. And when the cover was opened and the telegram was read, oh, what grief, what anguish was depicted in the faces around! Till a late hour in the night, and even on the morning following, small knots of people could be seen gathered in the nooks and corners in the Native quarters of the City, and the conviction of Mr. Tilak was the all-engrossing topic of discussion. The *Madras Times* correctly describes the feeling among the Native public in saying "that the news of Mr. Tilak's conviction was received as a national calamity. It would be impossible for a good length of time yet to obliterate the memory of that eventful evening, and it certainly cannot be said that the event has been conducive to the strengthening of the bonds existing between the Native and the Anglo-Indian communities in the country."

The Bengalee, English Weekly, Calcutta, September 25, 1897.

BAL GANGADHAR TILAK.

This number of the *Bengalee* appears with a black border out of respect and sympathy for Mr. Tilak. We believe him to be innocent of the charge laid to his door. No native of India, certainly, no one possessed of the intelligence and capacity of Mr. Tilak (and even his enemies must admit that he is a man of exceptional ability), can be otherwise than loyal to the British Government. Let us place the issues clearly before our readers. The overthrow of the British Government must either mean the establishment of Russian domination or the inauguration of a reign of anarchy; for a national Government under present circumstances, or for any definite period of time that we can think of, is out of the question. Are we prepared to welcome Russian domination? If a plebiscite were taken, there would be only one answer given to this question—an emphatic negative would come from all parts of the country. The Bombay Government has given us a slight foretaste of Russian methods, and we think we have had enough of them. Liberty of the Press, liberty of speech and writing, is one of the greatest blessings which British rule has conferred upon us. The institution, it is true, is foreign, but it has taken firm root in the soil. It has become a cherished institution, and any restriction imposed upon it would be regarded as a serious grievance. Now there would be no free Press under Russian rule—there would be no hope of a free Press under Russian rule for centuries to come—there would be the death of all free institutions and of the prospect of such institutions for an indefinite length of time. The greatest calamity that can happen to any country is that it should be linked as a dependency to any people who themselves live under a despotic government. The Russians are not a free people. Themselves far removed from the blessings of free institutions, the subject-races that acknowledge allegiance to them must be the very helots of helots. For them there is no hope of freedom in the near future—they must wade to freedom through countless difficulties. Our case is very different. We have many grievances. They are perhaps as countless as the stars of heaven and as multitudinous as the sands of the sea. Their number has sensibly been added to by the repressive policy which the Bombay Government in its infinite wisdom has thought fit to adopt. But our political destiny is associated with that of a free people who hold despotic methods in utter abhorrence, and who may sanction a policy of repression in a moment of passing ignorance, but who are sure to repudiate such a policy as soon as they have

recovered from the excitement of the moment and when all the facts of the situation have been placed before them. The British democracy love freedom for themselves and for their colonies and dependencies. An imperial people, they have the instincts of imperial rule. They are prepared to extend to their most distant dependencies the priceless blessing of British citizenship. The methods which have recently been adopted are not methods which will recommend themselves to them when the facts are known. They have no interest in maintaining for good a system of bureaucratic government in this country. The bureaucracy has been tried and has been found to be wanting. It has created unrest on the frontiers and unrest in the country by the pursuit of a policy which all must admit has proved a failure. Let the facts be known—let them be published in every English town—and the grievances connected with the present system of administration will be remedied. No educated Indian therefore wants the substitution of Russian domination for British rule in India. Nor is he in favour of a reign of anarchy. The instincts of the savage longing to relapse into primitive barbarism are not the instincts of the educated Indian. A national Government is also impossible. Such being the state of things, it follows that unless an educated man has taken absolute leave of his senses, he is bound to be loyal to the British Government in India. It is a reasoned loyalty. It has its roots in sentiment also. The British Government in India, notwithstanding its defects and drawbacks, has been essentially a progressive Government. Now and then there have been temporary fits in which the authorities like all men forgot reason and sense and have masqueraded in the forms of Russian despotism; but in all such cases their sanity soon asserted itself, and a policy of repression was followed by a renewed impulse for progress. The repressive *régime* of Lord Lytton was succeeded by an era of unexampled progress inaugurated by Lord Ripon. The enactment of the Vernacular Press Act was followed by its repeal and by the bestowal of the boon of Local Self-Government. No educated Indian can therefore be guilty of sedition. Mr. Tilak was not guilty of sedition. Such of his countrymen as were on the jury unanimously found him not guilty. The country endorses that verdict and protests against the conviction and sentence. The feeling of the people of India have been stirred to their depths by the sentence. There is genuine sympathy felt for Mr. Tilak all over India and among all sections of his countrymen. Bengal shares in this universal feeling and deeply sympathizes with him in his misfortune. He will not forfeit the respect and the esteem of his countrymen. His sufferings will have enhanced his position in their estimation. He will come forth from jail a far more powerful man than he had ever been before; and for this service he is indebted to the fatuous unwisdom of the Government of Bombay.

Amrita Bazaar Patrika, Calcutta English Daily, September 19, 1897.

We can console ourselves by regarding the Tilak affair as an accident or providential visitation. We have our earthquakes, famines, and plagues, and we have just now sedition prosecutions in Bombay. The plague brought in its train the plague rules; the rules brought in Mr. Rand to the front; Mr. Rand brought the murders; and the murders, the prosecutions for sedition. Mr. Rand was murdered, it is

believed, by a native of this country. And the sedition cases naturally followed it. Are these murders to go for nothing?

If Mr. Rand had not been murdered, there would have been no sedition prosecutions. We can, therefore, regard the incarceration of Mr. Tilak and other Poona editors as mere accidents and not give ourselves up to despair.

As for sedition, no one, European or Indian, believes in its existence. The Hindoo, who is not insane, can never wish for the overthrow of the British rule, for he has none to replace it. As for those Englishmen, who are declaring so vehemently that sedition is desolating the Empire, if they were sincere in their professions they would not have encouraged and supported these prosecutions and monstrous sentences, which, they know very well, are convulsing the whole of India and are regarded as domestic calamities by the people, and which have the likelihood of creating an intense feeling against the Government. If they had any real dread of sedition, they would not have adopted proceedings likely to evoke the worst political feelings in the minds of the people.

We all know the story of the Archbishop and Gil Blas. The former insisted that the latter should criticize, most freely, his sermons. Gil Blas regarded his master, the Archbishop, with great veneration; and when he insisted that his lectures should not be spared, he (Gil Blas) naturally took the pious padre at his word and criticized them honestly. The result was that he was put down for an ingrate, and expelled from the house of the Archbishop!

Have we not been taught from our infancy that goddess Freedom, when expelled from every country in the world, took refuge in England? Did not a distinguished English poet in a few sublime lines claim for his country the credit that no sooner did a man touch British soil than his shackles fell off? Was it not England which liberated the slaves at its own cost? Is not England the only country in Europe where there is absolute freedom of the press?

All these we have been taught from our boyhood. The London *Spectator* expressed surprise that, when the native papers in India would cease to exist as soon as the Russians or even the French took possession of the country, how was it that they should feel so bitter against British rule?

Placing implicit faith in the professions of Englishmen generally and their statesmen specially, the Indians undertook to criticize Government measures freely. Do they not feel just now as Gil Blas did, when he was expelled? Even when the sedition section was incorporated with the law, the authors of it seemed to shew so much contrition as to disarm the suspicion and opposition of the natives of the soil. They shewed as if they were ashamed of their work. They said that the section did not mean any direct or indirect interference with the liberty of the press. They said that the people would be as free to criticize Government measures as they were able to do before the addition of the sedition section to the Code.

Was it then the intention of the British Government to give absolute freedom to the native prees, so that they may offer only favourable criticism upon the measures of Government? Did they all mean to say: "Praise us as much as you like, you have the most absolute freedom to do it, but if you dare find fault with us you shall be immediately transported or sent to jail?"

It is quite possible that if the Natu brothers were under Aurungzeb and suspected of murder, they would not have been incarcerated in jail as the British Government has generously done, but hanged at once. Aurungzeb, however, never posed as a liberal-minded ruler and obedient servant of justice and law. Those who are avowedly despots, have no humbug in them, and they do not surprise their subjects by their actions as the present rulers have been doing.

"Do you mean to say that though we allowed you freedem of speech, we could allow you to preach sedition?"—says the irate and unreasonable English statesman of the present time, in reply to what we have said above. His ground is that, it is quite true British rule has given unlimited freedom to the press here, but no license to preach sedition.

Indeed! Why not be generous? Let the native papers preach sedition, but shew by your exellent rule that they are all *badmashes*. That is exactly the programme they laid down for themselves when they occupied this country. They have said often and often, that they would rule the country in such a way as to make the Indians forget that they have lost their national liberty, and that they would give the people of this country such a rule as they had never enjoyed before. Let this noble promise be fulfilled, and then sedition will cease to give any uneasiness, and the people will cease to purchase seditious newspapers.

If the present rulers are not prepared to act with that generosity which the Queen's Proclamation lays down for their guidance, they ought to have said so, and the natives would have acted accordingly. But they surprise—they came without warning! If the native papers had but known that the Government contemplated mischief, they would never have said hard things. Why did they not, before introducing their new policy, give the Bombay papers a fair warning? If they had not heeded that warning the Government might have then proceeded against them with some show of season.

The Hindu Patriot (Calcutta; English Weekly).

The news of the severe sentence passed upon Mr. Tilak will create a consternation throughout the land. Mr. Tilak's alleged offence is that he had attempted to create ill-feeling against Government. But did it never strike those, that are responsible for the institution of the proceedings against him, to reflect upon the probable consequences of such action? Whatever ill-feeling might have been created by the criticism of the entire Native Press, is as nothing compared to the ill-feeling—to use the mildest expression that we can think of—which is sure to be produced throughout the country by the news of the sentence which has been passed upon Mr. Tilak. This is not the way to win the love of a subject population. The remedy will prove worse than the disease. Assuming for the sake of argument that the writings taken exception to were really objectionable, we submit that their effect could be confined only amongst a few thousands of Mahrattas. But the effect of the punishment inflicted upon Mr. Tilak will not be confined to Maharashtra alone. The sentence will cause ill-feeling towards Government throughout India. Its memory will not soon fade. It will serve as an ugly memento of the Diamond Jubilee year. It will take many years to undo the mischief which has been wrought. If statesmanship had not been completely absent from the land at the present time, this inexcusable blunder would not have been

perpetrated. We believe, we state nothing but the simple truth when we say that, no sentence passed upon a Native of India in recent times has been received with so much dissatisfaction or has caused such widespread indignation as this sentence upon a man whom millions of Hindus all over the land regard, and will continue to regard, as a true patriot and a worthy son of India.

The Indian Nation,—English Weekly,—Calcutta, September 1897.

As the report in another column will show, the High Court of Bombay has rejected the application made on behalf of Mr. Tilak for leave to appeal to the Privy Council. Nothing therefore remains except to make an attempt to move that tribunal directly. If even that should fail, an effort should be made to have the law amended. Section 124A of the Indian Penal Code would seem to be clear enough in itself. But it has been obscured and rendered unworkable by the interpretations it has received from Sir Comer Petheram and Mr. Justice Strachey.

It is not possible to take a survey of all Anglo-Indian opinions, expressed through newspapers on the result of Mr. Tilak's case, but the following from the *Pioneer* may be regarded as typical. "The conviction of Tilak will do more towards checking the dissemination of slander and sedition than anything since the passing of the Vernacular Press Act. It will be received also with some feeling of relief by all who, with recollections of the fiasco in the *Bangabasi* and other cases, know what a peculiar ill effect must have been produced at this juncture by the failure of the Government prosecution. The case was a difficult one involving the precise meaning of vernacular words and phrases and the application of a parable, but the Judge in his summing up presented plain issues to the jury. At a time of trial and trouble, when everything likely to hamper the authorities in the government of the country was to be avoided, the accused saw fit to play upon the feelings of political discontent and religious bigotry among people notoriously disaffected, and under the thin guise of extolling the glories of the past, collected all possible points of prejudice against the existing order. Stripped of all disguise that was the object in view and that object was seditious, and it is against sedition in high places and in insidious forms that a heavy blow has been struck."

This expression of opinion has great significance. The *Pioneer* may be taken to represent a high standard of culture and morality among Anglo-Indians, at least as high as that of the classes from which jury-men are drawn. Well, what does so enlightened a critic say? He says in effect that the political effects of the conviction will be excellent. He does not apparently care to consider whether the conviction is justified by the law and the evidence in the case. He is concerned only with its results; and he thinks they will be wholesome. Slander and sedition will receive a check, at any rate in the dissemination. The most significant passage in the paragraph is that a peculiar ill-effect would have been produced by the failure of the Government prosecution. If the writer of the paragraph had been a juror in the case, could he have done justice? He would have started with the notion that a verdict of Not Guilty would mean disaster to the Government; and is not such a notion to be regarded as a prepossession fatal to the prisoner? We do not know who were the jurors that convicted Mr. Tilak. We earnestly hope, in the

interests of justice, that they had no prepossession of that or any other kind. And then, what does it matter in the judicial trial of a person that these are times of "trial and trouble" to the Government. We do not see any "trouble" to the Government nor any "trial" except such as has arisen in consequence of prosecutions instituted by itself. And assuming there were "any trial and trouble," they would be utterly irrelevant to the determination of purely judicial issues. The famine was, from a certain point of view, a "trouble," but it could have nothing to do with a prosecution for sedition. In this country famine-stricken men have no tendency to be voilent. If the "trouble" refers to fighting on the forntier, that commenced after the prosecution and long after Mr. Tilak's articles had been written. If there was sedition rampant in the country, that no doubt would be "trouble" that could not be ignored in judging violent speeches or writings, but there was not a trace of sedition anywhere in the country, if we keep out of view the Mahomedan riots in Calcutta. When the accused spoke and wrote the passages condemned, even those riots had not come. There was absolutely no trouble when the accused "saw fit to play," &c. Who are the people notoriously disaffected? Is not that another prepossession? In the eyes of critics like the *Pioneer*, is there any class of the Indian people that is not disaffected?

THE attitude of the *Pioneer* is typical for more reasons than one. It may be taken to be representative of Anglo-Indian opinion generally, and repesentative also of the sort of spirit in which laymen, labouring under prejudices, approach the consideration of legal questions. The *Pioneer's* paragraph from first to last is a tissue of assumptions, mere suspicions, fancies, prejudices, of course, all against the people and the prisoner. The intention of the writings had to be ascertained but the *Pioneer* quietly assumes that the object was seditious. That some people are disaffected is assumed. That people who write violently must be taught a lesson is taken to be a first principle. That Government is not to have its prestige lowered, that Government could not afford to sustain a defeat, are also accepted as principles. There is no use discussing these views, these assumptions, from a political point of view; but we say most emphatically that any body possessed with such ideas is unfit to sit on a jury or try as a judge. Those are not the ideas which should be brought to bear on the judicial determination of a case. Are not those ideas commonly entertained? That a paper like the *Pioneer* should entertain them raises a presumption that they cannot be uncommon. If they prevail widely they cannot but tend to seriously interfere with the administration of justice in the country.

Great interest attaches, and when history comes to be written, will attach to the letter which Mr. Tilak wrote to a friend shortly before his trial. "The other side expects me to do what amounts to pleading guilty. I am not prepared to do so. My position amongst the people entirely depends upon my character; and if I am cowed down by the prosecution, in the heart of my hearts—I know the case for the prosecution is the weakest that was ever placed before a jury—I think, living in Maharashtra is as good as living in the Andamans. On the merits of the case I am confident of success, though I cannot in this letter and in the present state of my health give you all my reasons. I am afraid only of a non-Mahratta-knowing jury, and not of justice. You as well as I know that we are incapable of nourishing any sinister feeling against British rule, and it is thus impossible for any of us to be con-

victed of such a heinous charge as sedition. Such risks, however, we must take if we dabble in politics. They are the risks of our profession, and I am prepared to face them. If you all advise, I am prepared to go only so far as this : I don't think that the articles are seditious, but the advisers of the Government think otherwise. I am sorry for it. But this will not satisfy the Government. Their object is to humiliate the Poona leaders, and I think in me they will not find a *kutcha* reed as they did in Professor Gokhale and the editor of the *Dnyan Prakash*. Then you must remember beyond a certain stage we are all servants of the people. You will be betraying and disappointing them if you show a lamentable want of courage at a critical time. But, above all, as an honest and honourable man, how can I plead guilty to the charge of entertaining sedition when I had none ? If I am convicted, the sympathy of my countrymen will support me in my trouble."

The Indian Mirror, Calcutta, September 17, English Daily.

The result of the Tilak case has caused profound sensation throughout the country. Having regard to the position of Mr. Tilak, his close connection with the Government, his education and past services, his social position, and his great popularity among the Indian classes in the Bombay Presidency, his conviction for sedition, and sentence of eighteen months' rigorous imprisonment have been received with amazement and dismay everywhere in India. It were idle to conceal from our rulers the feeling, shared by the entire Indian population, that justice has not been done, that the constitution of the jury and the charge of the presiding Judge to the jury were not calculated to bring about justice, and that Mr. Tilak has been made a martyr to the prevailing angry feeling among the European community. Because the people think that justice has not been done in the case, and that Mr. Tilak is punished for imaginary sedition, every educated Indian at least feels the injustice in his own person, and that a great national disaster has overtaken the country. So far as we are aware this is the universal feeling among our countrymen, and it would be idle and insincere to conceal it. So far as we know the opinions and feelings of the educated classes, if Mr. Tilak had been guilty of real sedition, or of propagating anything like sedition, he would not have got the sympathy, which his conviction and sentence have drawn upon him. The Editor of the *Pratoda* was an utterly unknown man, and it is not so much his conviction that has excited the sympathy of his countrymen, as the preposterously heavy sentence, passed upon him by Mr. Aston. His fate was decided by the judgment or caprice of a single man. It has been otherwise in the case of Mr. Tilak. His fate has been decided by an European Judge and six jurors, all of them probably Europeans. What with the tendency of the times, the present temper of the European community in India, the prejudice, excited against the Mahrattas of Pun a, since the murders of Mr. Rand and Lieutenant Ayerst, and the extremely one-sided charge of Mr. Justice Strachey, the verdict was a foregone conclusion. The anticipated conviction of Mr. Tilak has come, but it, by no means, follows that justice has been done. While this is the feeling of the Indian community, the European feeling is just the reverse. It is as if they were longing for Tilak's blood, and his conviction has made Europeans exultant. A local Anglo-Indian paper is not satisfied with the pound of flesh, decreed by Mr. Justice Strachey, and talks of an appeal for an enhancement of the sentence. But to look at matters dispassionately, we must say

that the Bombay High Court has been guilty of several grave errors in this case. To refer to the principal error, Sir Charles Farran should never have allowed the case to be tried by Mr. Justice Strachey. The case was one of the greatest importance, and involved the settlement of grave issues. It was too much to expect that so young and inexperienced a Judge, as Mr. Arthur Strachey, could rise equal to the importance of the issues before him. In a case of similar importance in Calcutta, namely, the *Bangabasi* case, the Chief Justice, Sir Comer Petheram, decided to hear it himself. Sir Charles Farran ought to have done the same. In the *Bangabasi* case, as in the Tilak case, the jury were divided, a small minority being for an acquittal. Under the circumstances, Sir Comer refused to accept the verdict of the majority, and ordered a fresh trial. It has happened quite differently in Bombay, under Mr. Justice Strachey.

The Tilak case ought not to be allowed to rest here. According to Bombay telegrams, Mr. Tilak's counsel intend to make a reference to a Full Bench of the High Court, and failing there, to the Privy Council, on certain points, but chiefly as regards Mr. Justice Strachey's summing up, and the definition of "disaffection," given by him. It is most important that this point should be cleared up. If this young Judge's law holds good, then criticism of Government measures becomes impossible, and, according to his definition of disaffection, any honest representation of a grievance becomes sedition! In that case, the purely Indian section of the Press had better cease to exist, for its conductors will have the sword of Damocles hanging unceasingly over their heads. Better far the Gagging Act than the law as enunciated by Mr. Justice Strachey. We should be glad if the matter were placed before the Privy Council. Every educated Indian feels that what with the revival of moribund regulations and this strange ruling of Mr. Justice Strachey, he had better clear out of the country, for even in Continental Europe, where Anarchists and Socialists run rampant, the law of sedition is not so dangerous to the liberty of the subject, as the young Bombay Judge has, consciously or unconsciously, made it to the people of India.

The Power, Calcutta, English Weekly.

It is the misfortune of India that one of her foremost sons should be thus incarcerated. There is not a Hindu in all India who will not weep at the misfortune of Mr. Tilak as if it were a personal misfortune. In the drawing room and street corners, in markets and squares, in places of amusement and recreation, wherever in fact men do congregate, Mr. Tilak's case has been the sole topic of conversation during the past few weeks. The Government can send Mr. Tilak to jail, but it cannot rob him of the sympathy—the heart-felt sympathy—of his countrymen and co-religionists.

The Indian Messenger, Calcutta, September 19, English Weekly.

As to the jury that tried Mr. Tilak, the majority were Anglo-Indians, for whom it is very difficult to preserve an unprejudiced frame of mind in political trials. Of course it may be said on the other side that Mr. Tilak's countrymen also could not

be expected to be unbiassed judges of his guilt. But why was not the trial allowed to take place at Poona, in which case the decision of the Judge, if unfavourable, might have been appealed against by the accused, and the appeal would have been heard by two High Court Judges? Sir Erskine May, referring to the trial of the great Irish leader, O' Connell, by a jury composed exclusively of Protestants, says that this circumstance deprived the trial "of much of its moral weight, and raised imputations of unfairness," as "the leader of the Catholic party—the man who had triumphed over Protestant ascendancy"—was "tried by his foes." The difficulties of the situation in India regarding political trials are such, that Government should do everything in its power to place them above the suspicion of injustice; and it is absolutely necessary that the law should be so amended as to give the right of appeal in all such cases. That is the only way to minimise the risks of injustice.

The Dacca Gazette, Anglo-Bengalee, September 20, 1897.

SEDITION AND MR. TILAK.

Mr. Tilak has been found guilty of sedition by the High Court of Bombay and has been sentenced to eighteen months' imprisonment with hard labour. But a vast majority of Mr. Tilak's countrymen refuse to believe that he was guilty, and there is abundant sympathy with that great man in his present troubles. It is much to be regretted that the Government of Bombay should be unable to read aright the sentiments of the millions placed under its administration, and this misunderstanding of the people's feelings on the part of the Government is a fertile source of trouble both to the administration and the people. The sentiment of self-preservation is perhaps the strongest sentiment in man, and it need scarcely be said that the promptings of prudence and intelligence alike loudly dictate to educated India the necessity of the continuance of the British Power here. It is a patent fact that the educated middle class is an offspring of the English rule, and with the subversion of the British power that class will be nowhere. It is also a patent fact that our people, left to themselves, are yet unable to take care of them against powerful nations looking at our country with anxious cupidity. They are also aware that no other Government will allow so much liberty to the subject people as England has been doing. With all this knowledge in them it is impossible that any of the people should aim at the subversion of the present Government. Had our rulers all over the country a true conception of the Indian thoughts on the subject, some of them should never have been troubled so much by phantoms of their own mistaken imagination. Love of independence is innate in the man, and it would be telling a lie if we were to say that the Indian people are not alive to that noble sentiment; but love of independence is one thing and the desire to have it at a time when one is incapable of protecting it is quite another thing. Between sanity and madness the only difference is reason,—the man of reason and the lunatic are equally possessed of their desires, but one keeps them under restraint from prudential and other considerations, and the other allows his fancy to run riot. The Indian people may or should like independence, but it would be nothing short of madness to desire to have it now. The Indian people hope and expect that the English nation in their administration of India shall present an ideal example, which history, from the dawn of human knowledge, has not yet seen. We believe, it

is the proud mission of England in India, not to keep the Indian people in everlasting thraldom, but to rear them up under England's superior guidance in such a manner that in the fullness of time they may take their stand by the side of the proud nations of this world, living in perfect amity with England. England shall then, and then alone, have achieved the glorious victory which shall cast the brightest achievements of the Roman Empire into the shade.

Coming to the point, let us observe, that the law of sedition, as we find it in Sec. 124A of the Indian Penal Code, leaves the real question in glorious uncertainty, and the Judges who take upon themselves the responsibility of judging a man accused of a charge under that section should think twice before convicting him of that, when there is considerable difference of opinion among the Judges themselves, including under the term Judge both the Jury and the Judge. In Mr. Tilak's trial, it is very unfortunate that the majority of the Jurors should have been ignorant of the language in which the condemned articles were written and had to rely on translations only, which, in Sir William Jones's language, like a highly volatile substance loses a good deal of its essence in pouring it forth from one bottle to another. The spirit of the articles, taken as a whole, was the only thing to be considered. Is it possible always to reflect the spirit of one language by the terms of quite a distinct language, when there is hardly anything common between the genius of the two languages?

Sir Comer Petheram refused to accept the verdict of the Jury in the *Bangabasi* case, as it was not unanimous, though there was a larger majority on one side; but here Mr. Justice Strachey had no hesitation to pronounce a severe sentence on the verdict of a majority which had just the legal numerical strength. Mr. Tilak's lifelong good services on the side of the Government went for nothing, and he is branded as an enemy to the Government. It is certainly nothing short of a very curious irony of fate.

The Indian Social Reformer, English Weekly, Madras, September 19, 1897.

Whether the speeches and writings of Mr. Tilak on which the present charge was based were seditious or not, is a question which, the defence have tried to make out, can be discussed only by those who have a knowledge of the Marathi language. The Jury evidently thought the official translation more reliable than Mr. Tilak's own. So far, however, as we are able to judge, considering all that has been urged on both sides, we are inclined to believe that Mr. Tilak's real intention was not to excite disaffection to Government or weaken its hold on his countrymen, but to impress on them that they should depend more on themselves and less on law for preventing the violation of their personal rights and dearly cherished prejudices by insolent and individual foreigners.

The Madras Standard, English Daily, September 21, 1897.

The charge of Mr. Justice Strachey to the Jury in Tilak case is, and has been for some days, the principal topic of interest; and in view of the acrimonious controversy which has arisen over the subject, we have consulted the highest legal

authorities in the Presidency, and our remarks are based substantially on their opinions. We are not disposed, on the one hand, to condemn the learned Judge's charge as a tissue of blunders and misdirections to the Jury; nor, on the other hand, are we prepared to extol it to the skies as a monument of judicial wisdom and acumen. Mr. Justice Strachey's summing up, however, must, on the whole, be admitted to be a clever one; and perhaps senior Judges and senior Members of the Bar with great experience would be disposed to regard it as the production of a clever young man. Mr. Strachey is, in fact, the "youngster" of the Bombay High Court Bench. His Lordship, as is known, is a son of Sir J. Strachey, and was a practising Barrister at Allahabad. About two years ago, when a vacancy occurred in the Bombay High Court, he was sought out from Allahabad and elevated to fill the vacancy; and Mr. Starling, who had been appointed by the local Government as an Acting Judge, was actually displaced by the orders of the Secretary of State to make way for the rising forensic light of Allahabad. At the time he was 37 or 39 years of age (if we remember rightly), and the fact of his father being in the India Council was generally considered to have, in some degree at least, influenced his selection for judicial preferment. Under these circumstances, it is to be scarcely expected that a charge by Mr. Justice Strachey would be replete with legal lore and bear the imprint of vast judicial experience. That he is a clever and promising man there can be no manner of doubt; and in his summing up he has simply appeared in his true character. Had he been a judge of greater experience, his charge would probably have been less definite and a good deal less positive.

The main feature about his summing up, which has given rise to controversy was his definition of disaffection; for he is reported to have said that disaffection means simply the absence of affection. It means "hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government." Even if his definition be correct, with the simple exception of disaffection meaning absence of affection, there is still ground for complaint; for it may be argued that the Jury after being unable to fit Mr. Tilak's writings into the other portions of the Judge's definition, might have brought them under the first and objectionable portion.

The Weekly Review, Madras.

The Anglo-Indian God of Vengeance has had his satisfaction. He claimed the Hon'ble Mr. Tilak as a sacrifice for the murders on the Jubilee night. He has had it. Mr. Tilak has been convicted and sentenced to 18 months' rigorous imprisonment. But we hope this easy satisfaction will not demoralize the God still further and make him more clamorous than ever for innocent victims.

The Nyaya Sudha, Nagpur (Anglo-Marathi), September 20, 1897.

The two incriminating articles and the number of other documents filed before the court by both sides were in Marathi of which language neither the counsel for prosecution nor for defence, the judge himself and the majority of jurors knew anything. It was, therefore, essential for the ends of justice that the judge and the jury should have had the benefit of an expert who would have been able to clear the doubts of the meanings of several important words and expressions rendered into English by the High Court translator to which an exception was taken by the

defence. The summoning of an expert to throw light on the disputed] meanings originally emanated from the judge himself. But strangely enough he did not consider it necessary eventually to have the assistance of an expert. So the case was decided in ignorance of the meanings of certain words and expressions which formed essentially the subject-matter of the charge.

The South Indian Mail, Madras,—English Weekly.

It is hoped that Mr. Tilak, for whose conviction the whole country mourns, will be able to establish his innocence before the temple of justice—that palladium of liberty. He has been a man of the people, a prominent leader of his community, who has been working for the regeneration of his countrymen according to his ideals, and a member of the Bombay Legislative Council enjoying, till very recently, the confidence of the Government. His conviction is regarded as a national calamity by the people of India.

The Mysore Standard—(Weekly).

The great Tilak trial is of much importance to us in many respects, and probably at the present stage of the national growth of India the unhappy incident must be made to serve better purposes than those of protesting ceaselessly against the Government injustice to the people. That there has been great injustice done to Mr. Tilak in this case from a legal estimation of the nature of his writings, will probably be admitted by his bitterest opponents themselves in the course of a few years hence and justified too, perhaps, in a way.

Taking the fact into consideration that six of them were Europeans and three were Indians, the finding of the Jury probably determines the fact that in regard to the great sensational trial hardly a European could be found to grant Tilak's innocence, and hardly a native too who can afford to condemn the Poona hero, and at any rate such is the public feeling all over India.

The Guzerat Mitra, (Anglo-Guzerati Weekly), Surat, September 26, 1897.

The Tilak Case.—The sensational case is over, Mr. Tilak has been convicted and the Section 124A has been tested. Were it not for the interpretation put upon the word *disaffection* by Mr. Justice Strachey and for the disagreement between the views of Sir Comer Petheram and those of Mr. Justice Strachey, and for the great divergence of views between the convicting Judge in this trial and those who were responsible for the framing of the Section, the matter would have perhaps ended with the conviction of the accused. We remarked in our last number that the issues involved in the conviction of Mr. Tilak on the strength of the interpretation put upon the Section 124A by Mr. Justice Strachey are fraught with danger to journalism—we mean Indian journalism—and to public free criticism of the 'measures' of the Government. The matter was intended to be taken by Mr. Tilak's legal advisers to the Privy Council. And it was a most necessary and desirable thing to be done, for under the law, as interpreted by Mr. Justice Strachey, criticism—even honest and free criticism—would be construed as 'absence

of affection,' but as fates would have it, the application by Mr. Tilak's counsel to the Full Bench of the High Court for permission to appeal to the Privy Council has been rejected.

British rule and free criticism must co-exist. The law as laid down by Mr. Justice Strachey and free journalism are wide apart as the poles, but this very polarity enables us to hope that British sense of freedom of thought and speech shall prevail. England is not Russia.

The Indian Spectator,—English Weekly,—Bombay.

So, the great test case of sedition is ended, and the conviction of Mr. Tilak brings home the terrible reality of Section 124A of the Penal Code. The long time during which the section remained dormant, the circumstances under which it was determined to test its efficacy, the status of the person who was first selected for a corrective lesson, the trial, the evidence of the arguments, counsels on both sides, and the unique summing up of the presiding Judge and the punishment, which was certainly much more moderate than those who heard the summing up had been led to expect—all these raise such a variety of perplexing thoughts and conflicting feelings that it would be another unbearable infliction to pour them all down and try to draw morals which will be acceptable to all. But speak and think we must—journalists at least; and we might well begin with "Oh! what a pity!" that blessed expression which so often is more full of meaning than a string of words or sentences. What a pity it is, that a man of such natural parts and so much energy as Mr. Tilak, a man who rose to notice by great sacrifice and who went up to the top-most steps of civic life by being chosen by intelligent electorates to be a Fellow of the University and a member of the Legislative Council,—what a pity that a man of this stamp should not have been able to carve out a course which would have enabled him to do good to the public without losing the good-will or at least without incurring the distrust of the Government! We have hardly ever sympathised with his writings or his methods of work, or with his propaganda of achieving political advancement without special progress; but we had an admiration for his natural abilities, his bold front and his multifarious activities, the altruistic goodness of many of which could not be doubted even by an opponent. Strongly though we differed from him, we did not suspect it was more than a difference of views, of mode of representing and of having grievance redressed. Sedition and disloyalty are ugly terms; and we must own, we did not even suspect that at least in the popular sense of the word, either could be predicated of his writings, or of the movements with which his name is specially identified, till six out of Bombay Jury of nine gentlemen, pronounced him guilty of an offence punishable with transportation for life.

(The *Dnyan Prakash*, of Poona, an Anglo-Marathi weekly, takes the same view in its issue of 27th September.)

The Hindustan, Bombay, September 19, 1897.

Mr. Tilak's Trial.

Sursum Corda! Those who have lost heart will do more harm to themselves than to anybody else. Tilak is sentenced for sedition. But look to the term. It

is a period for which a person stealing a shoe was the other day sentenced by a magistrate. The indictment appears very significant. Government does not want to be harsh. It is traditionally very lenient, and we, in return, are all loyal to the core. Just read between the lines the Judge's speech for sentence. Tilak,—no more the Hon'ble Mr. Tilak—"for a considerable period did good work in connection with the plague," for which he got thanks. Tilak for a moment "indulged in a sentiment which the European portion of the jury pronounced to be seditious, for which he got eighteen months. Tilak "attempted to enforce a reasonable policy upon his countrymen and co-operated with the Government." Tilak was just after that "animated by a feeling of disloyalty and disaffection to the British Government and attempted to inspire those feelings in his readers." Tilak "is not an ordinary obscure editor and publisher, but is one of the leading members of his country and being a man of influence, many of his people look for their guidance to him, a man of intelligence, a man of remarkable ability and energy, and who might, under other circumstances, have been a useful force in the State." It is now plainly exposed, that but for the recent assasinations, Tilak would never have been tried. If he had indulged in sentiments of far higher flight of imagination in times other than those of this year, no cognisance would have been taken of such impudence. Law ordains the minimum punishment as three years. Taking the gravity of the offence into consideration, the Judge administered half the portion. Bal, the printer, was unanimously acquitted. These and other sentiments of far more weird interest have filled the minds of the nation with a very hazy and dubious view of a trial for sedition. Mr. Aston, pronouncing the highest term of punishment laid down by law upon the editor of the *Pratoda*, lent very dramatic aspect to the case. If we persist in indulging our favourite phrase, when Mr. Strachey sentenced Tilak for eighteen months, he turned the whole tragedy into a very bright burlesque. Everybody in the Court was quite astonished to hear it. What are the lasting effects of this, imagination beggars description.

Native Opinion, Bombay-(Anglo-Marathi)-September 19, 1897

The most exciting events of the week, or rather of the last three months, were the two trials for sedition, and they have each terminated in a peculiar way. The case in which the Hon. Mr. B. G. Tilak, proprietor of the *Kesari*, was charged under Section 124A ended on Tuesday in his conviction by a majority of six to three, and sentence of 18 months' rigorous imprisonment. The trial of Mr. S. V. Kelkar, of the *Poona Vaibhaw* for the same offence, was rendered abortive by a division of the jury as five and four, and it will now rest with the prosecution to decide whether to withdraw the charge or commence a new trial. So the fact of one more juryman going over to the side of the defence in the second case makes all the difference between the conditions of the two accused, that while one is still at large, the other has been put into prison. Section 305 of the Criminal Procedure Code, which fixes the minimum majority of six to three absolutely required for the acceptance of the verdict of a jury is very arbitrary and has been introduced only for the sake of convenience, but never could the framers of the Code have dreamt that arbitrary limit would assume such a vital importance as in Tilak's case. Under English law, which requires the unanimous verdict of a jury, Mr. Tilak could never have been convicted, nor could he have been, if Mr. Justice Strachey had followed Sir Comer Petheram's example in the Bangobasi case in not accepting the verdict of a majority only.

The Bhimsen, Gujarathi Daily, Bombay.

It now behoves the Native journalists to leave aside their differences of opinion, and to unite in a general cause to come to a definite conclusion as to the extent of the freedom of writing they may indulge in. A line should be drawn to show how far Native papers can criticise the aims, orders, and actions of the Government. The Native journalists should ask for a satisfactory explanation as to the extent of their freedom.

Indu Prakash,
Anglo-Marathi, Bombay, September 14, 1897.

Last evening Mr. Tilak was found guilty of attempting to excite disaffection by a jury consisting of a majority of six to three. There was no doubt of the verdict since Mr. Justice Strachey had summed up dead against Mr. Tilak. This result was perhaps foreseen for the temper of the Anglo-Indian public was well-known, and even the Judge's summing-up showed that he too had not looked at the articles in a fair, broad and liberal spirit. In the first place, no latitude was shown, towards a political effusion; secondly, he absolutely failed to grasp the point that the speeches of the various professors referred to two distinct points, namely, the historical estimate of Shivaji's character, and the internal dissensions among the Poona Brahmans. We will not discuss the case fully at this stage. But we may merely remark that the Judge showed a certain amount of anxiety in securing a conviction: he tried to defend the Government instituting prosecution in Bombay, tried to defend the High Court for refusing to allow Mr. Garth to appear in the case, and even went to the length of suggesting that a man may co-operate with Government for the good of his countrymen at the risk of incurring their odium, and yet his conduct may be quite compatible with creating hatred of Government. Sir Comer Petheram would not have any but a unanimous verdict in such a case. Mr. Strachey would take a divided verdict. Mr. Justice Strachey had so well studied the whole case that he even refused to reserve the law points for the consideration of his colleagues; though he told the jury that the English law was not applicable. It was also not quite dignified to see the Judge holding a drawing room on the bench while the jury had gone out to deliberate. The presence of the Anglo-Indian editors, men who had prosecuted Mr. Tilak, on the dais where the Judge sits, did not show sufficient regard to decency. Coming from external circumstances to the merits of the charge, we cannot help feeling that the Judge imparted so much of his own feeling that it was impossible for the jury to come to an independent and impartial conclusion.

The Phœnix, English Weekly, Karachi.

Mr. Tilak has been sentenced to eighteen months' rigorous imprisonment. We are exceedingly grieved at the sad intelligence. But our grief should not lead us away from the path of reason. We refrain from expressing any definite opinion as to whether the sentence is merited or not before reading the full text of the judgment. No doubt the articles in the *Kesari* were violent, but it is *morally* certain that the Hon'ble Mr. Tilak had no intention of creating disaffection towards the Government.

The Advocate, English Weekly, Lucknow, September 21, 1897.

The sensation created by Mr. Tilak's conviction throughout the length and breadth of India is natural. Before his trial people only knew him by name. They had heard of his self-devotion and sacrifice, but the State trial has made his name a household word, and we think we are not exaggerating to say that every Indian who reads newspapers, or keeps himself in any way in touch with public opinion feels strongly for him on his misfortune, while there are thousands, nay, lakhs of men, who consider him a martyr to his country. There is a wide-spread sympathy for him throughout the country, and if it does not find expression in large meetings, in every centre of thought and culture, it is due to the scare that has been created throughout India by the measures adopted by the Government of India in the past few days. People who do not indulge in violent language, men who are always moderate and happy in the choice of their language, feel a sense of insecurity, and do not know what is to happen next. The Indian Government, in its wisdom, might approve of this state of things and consider this may lead to some happy results, but people, on the contrary, cannot cease considering that a great wrong has been done, and it is one of those political blunders which even the strongest rulers would regret in their calmer moments. As far as Mr. Tilak personally is concerned, he is a man of a philosophical mind. He has made great sacrifices for his people. He will, we hope, come out from the present troubles with redoubled energy, and, we hope, will, as hitherto, continue to devote his energies and abilities in the service of his fallen countrymen. He feels he is innocent. His own peers who sat to try him declared him to be not guilty. The majority of his countrymen will believe in the verdict passed by Mahrattas than in the interpretation put by foreigners. He, instead of losing the respect of the people, will still more be esteemed and respected. But it is not Mr. Tilak's pesonality which has created a sensation in the public mind but something else. People do not so much regret the fall of a great man, if fall it can be called by men who never admired the line of action adopted by Mr. Tilak. In his own town, men of intelligence and patriotism were not found wanting to express their dissatisfaction with the strong writings of Mr. Tilak, though all of them admired his devotion and honesty of purpose. * * *

We are pleased to learn that Mr. Tilak's counsel intends applying for a full bench consideration of the case on the ground that Mr. Justice Strachey was not impartial in his charge to the jury and also in regard to his direction to the jury on the meaning of the word "disaffection," and on other grounds. In case of failure, application is likely to be made to the Privy Council. Mr. Pugh is fighting for a noble cause on behalf of the people, who should by all means strengthen his hands and thus get the judgment set aside, which will do more to muzzle the Press than a Gagging Act.

The Tribune, English Bi-Weekly, Lahore, Saturday, September 18, 1897.

The importance of the trial is mainly derived from the position of the prisoner. Mr. Tilak is not, as some have supposed, a man of wealth, but he is, undoubtedly, a man of influence. He is probably the most influential man in Poona, being the

recognised leader of the orthodox, and, consequently, the larger section of the community. It is impossible to confound him with the common herd of vernacular journalists. He is a scholar of very considerable attainments, a Sanscritist of high repute, a controversialist of great power, and a man of unmistakable intellectual force and energy of character. His election to the Bombay Legislative Council was a proof of his influence and the confidence that he enjoys of his own people. This has also increased the importance and seriousness of the charge against him. He was associated with the Bombay Government in the work of legislation for two years, and for a second time he was recommended for nomination to the Legislative Council. The recommendation was accepted and he was nominated. That such a man should be accused of attempting to excite disaffection to the Government was in itself a most sensational event. On many important points Mr. Tilak's views differed from those of his educated countrymen, and he brought all the energy of his nature to bear on the position that he took up on any question. He is a resolute opponent of social reform. No objection had ever been raised to the Social Conference being annually held in the National Congress Hall, but when the Congress was held in Poona, Mr. Tilak resolutely opposed the following of this precedent, and so formidable was the opposition organised by him that the Social Conference had to meet in another place. In Poona itself Mr. Gokhale and others belonging to the reform party, were opposed to him. But Mr. Tilak's ascendancy over the orthodox party was unquestionable, as well as the sincerity of his beliefs and the honesty of his professions. In spite, therefore, of the difference of opinion that existed between him and many ef his educated countrymen, widespread sympathy was felt for him when he was arrested and charged with exciting disaffection to the Government. It was everywhere recognised as most unfortunate that such a man should find himself in such a position. The needless severity displayed towards him until he was admitted to bail also increased the sympathy for him.

Grave as was the charge brought against him, still graver was the prejudice created against Mr. Tilak before the trial actually came on. Letters and articles in Anglo-Indian papers, most violent correspondence and editorial utterances in some English papers, questions and answers in Parliament had practically established Mr. Tilak's guilt before his trial. He was brought to the bar, a condemned man. The Advocate-General, the Judge, and the counsel for the defence made the usual formal appeal to the jury to disabuse their minds of anything they might have read or heard outside the court. Never was such an appeal so essentially needed in any case. For weeks past the public mind had been full of this one affair to the exclusion of almost every other topic. In Bombay itself public discussion in the newspaper press ceased after the commitment to the High Court Sessions, but the case went on being discussed, and pronounced upon elsewhere. It is one of the cases which are judged and disposed of outside the court by an impatient or prejudiced public. The country was generally prepared for a conviction ; there would have been considerable surprise if the trial had resulted in an acquittal. In the composition of the jury, the majority were Anglo-Indians. If the accused had been a British-born subject, he would have been entitled to claim, as of right, that the majority of the jurymen should be his own countrymen. The law does not allow an Indian to make such a claim. In this case the majority of the jurors had the further disadvantage of being ignorant of the language in which an attempt had been made to excite disaffection. They, no doubt, did their duty conscientiously, and according to their

lights; but in view of the admitted difference of opinion on the merits of the different translations, it cannot but be regretted that they were ignorant of the Mahratti language. The Judge himself was so much struck by this feature of the case that he thought at one time of calling additional expert evidence, but he afterwards decided not to do so, preferring, as he afterwards showed, to judge of the writings as a whole.

The Arjuna, English Weekly, Lahore.

The trial of the Hon. Mr. Bal Gangadhar Tilak, the editor and proprietor of the *Kesari*, came to a termination on Tuesday last. The Judge, concurring with the jury, which had brought in a verdict of guilty, sentenced the Editor to eighteen months' imprisonment. The jury, which was composed of nine—6 Europeans and 3 natives—were, however, divided, six recording guilty and three not guilty. Mr. Bal, the printer, has been acquitted. The conviction of Mr. Tilak has not come as a surprise. It was a foregone conclusion. From the beginning grave doubts and misgivings were being felt as regards the result of the trial. The fight between the Government and the accused was regarded as the fight between a giant and a dwarf. The former being all powerful can crush, with one stroke of the pen, any number of native Editors, however influential and wealthy they may be. Considering the unfortunate circumstances under which Mr. Tilak was arrested, such as the righteous indignation of the Bombay Government at the assassination of Mr. Rand and Lieutenant Ayerst, the strong excitement among the Anglo-Indians there, the prejudice existing against the accused for starting the Shivaji movement, considering all these circumstances, the sentence is certainly not too severe. As it is, we are exceedingly sorry for Mr. Tilak, and express our deepest sympathy in his trouble. The sentence however is subject to appeal to the Privy Council, and it may be learnt with some satisfaction that Mr. Pugh is engaged in making a reference on behalf of Mr. Tilak to that Supreme Court of Justice.

The Mahratta, English Weekly, Poona, September 20.

THE THOUGHT OF THE HOUR.

Indeed Mr. Lamb was a true prophet when he foretold the doom of Poona. Mr. Lamb was a prophet, and no wonder; because he was in the secret. His prophecy, why it was more than a prophecy—his *promise*, that the beloved city of his birth would have to experience all the horrors that the surging wrath and mighty power of a masterful Government can create, is being gradually realised. We do not at all refer to the topic in a complaining mood. Nor is there anything, in the later manifestations of that prophecy, that can call forth our surprise. We still adhere to what we said, in noticing the Poona troubles for the first time, that the Bombay Government has successfully established what might be called a reign of terror in Poona. Nothing to our mind could approach, either in point of its unaccountableness, or its capacity to terrorise people, the one act of the "will-law" on the part of the Bombay Government, by which the Natu brothers were arrested and deported without hearing and without trial. The press prosecutions, however, are not such absolute dangers threatening the life of

loyal citizens, as these deportations. A state prosec ution *is* indeed terrible, but is not so ugly, nor half so demoralising as the resuscitation of the old world spectre of a Regulation. As a matter of principle, we have no quarrel with that kind of persecution which is called a prosecution. Those that have the misfortune to incur the displeasure of their sovereign must consider themselves as still the pets of fortune, if they are given an open trial and a fair hearing. It is no small privilege, even for the proudest and the most honourable of the subjects of the British Government, to be able to keep the sovereign power at arm's length, so long as it has to seek and pray for such assistance as law and law courts can give. Indeed, people are in the habit of complaining that while our brother subjects in England are enjoying the benefits of a Parlimentary Govennment, we, out here, the loyal subjects of the same gracious Sovereign, are handed over to the tender mercies of occidental Sultans. But they forget that in the *respect*, whether forced or free, to law and constitutionalism which the most autocratic of Governors must pay, lies the bulwork of our liberty and our independance. In the face of that forgetfulness to which Parliament has consigned us, should we not be rather thankful that the old statute books are not more often ransacked for specifics against constitutionalism? If the Natu brothers mourn their captivity they have still more to mourn the gag applied to their mouths. Mr. Tilak, we dare say, has at least the satisfaction to be conscious that his case is before the world. Neither Mr. Tilak nor his friends can complain, on principle, that he was prosecuted for writing something which the Government thought seditious, because the way in which Government has sought to vindicate itself is perfectly legitimate. Saving this much we feel justified in adding that it is, however, open to him, or them, to say that he did not get justice notwithstanding the legitimacy of the action taken against him. There are good many reasons in support of this allegation. If, as Mr. Justice Strachey has repeatedly pointed out, Mr. Tilak should not have written or spoken certain words at the time he did, because the people, who read or heard them, might have an agitated state of mind, precisely for the same reason, the prosecution should not have been instituted at the present time, because the community represented by the majority of the jury could not possibly be enjoying a calm temperament. The Jury attributing the Poona crimes to the writings in the *Kesari* could not certainly be called wiser in appreciating the law of causation than the people who laid the sins of famine and pestilence at the doors of the British Government. All the same, the illogicality is apparent in both the cases, and if Mr. Tilak was wrong in discoursing on political morality to half-educated people, the Bombay Government was not certainly right in handing him over to the mercy of a prejudiced, not to say infuriated, jury. A philosopher would not convict Mr. Tilak for sedition, as he could not also be instigated by his writings to take up arms against the British rule. But, as Mr. Justice Strachey advised the Jury to think of what effect might be made on the mind of an *average* reader or hearer, so also, *in the interest of justice*, Government ought to have seen what verdict an *average* Anglo-Indian might return. If it be impossible to get perfectly unbiased jurors, we should at least take men at their *normal* moods. If Mr. Tilak was to be prosecuted at all the case should have been transferred to a High Court outside the Presidency, so that greater impartiality could have been secured. As the incriminating articles were in Marathi, and as the estimate of their effect was to be made from the im-

pression they would produce upon an ordinary Marathi-knowing man, it was but proper to have Marathi-knowing men on the Jury. The claim need not seem preposterous, and Government should have granted to Mr. Tilak, at least as a *favour*, what the meanest European British subject demands as a matter of *lawful right*, *viz.*, a majority representing his race, in the jury. The purpose could even have been well served, if experts in the Marathi language were called. The Judge at one time seemed inclined to do it; but Mr. Tilak's misfortune, if nothing else, prevented it. And so Mr. Tilak was tried and convicted by a judge and the majority of a jury who did not know Marathi,—at least not so well as to properly appreciate the niceties and subtleties on which the collected sense of the offending passages so entirely depended. Mr. Tilak asserted that he did not get justice, and who would say that he did? The prosecution, we repeat, was legitimate; and excepting on a point or two, the trial did conform to the law of the land. And yet can Mr. Tilak be said to have got justice? It is Cicero, we think, who has defined justice as "conformity to the written-law." In that sense perhaps, justice may be said to have been done. But not even in that sense; for the letter of the written law is something different from the spirit of it, and the spirit of the law by which Mr. Tilak was judged was not properly interpreted by the Judge and appreciated by the Jury in the present case. "It is impossible to be just if one is not generous," observes a great thinker. And in the present case not only no generosity has been shown, but law has, as pointed out above, been forcibly divorced from equity, which tempers the rigour of law or levels its angularities, and thus forms the better part of justice. It is transparent that the Bombay Government has given Mr. Tilak the *most technical justice*,—justice which stumbles on innocence and does harm. From the very choice of the place of trial, onwards, a diligent attempt was apparent on the part of Government to give Mr. Tilak nothing more than such technical justice.

But it is no use complaining. Mr. Tilak may or may not have got his due; your arguments avail not, much less your tears. It is true that proceedings like these are calculated to undermine respect for law as a hand-maid to justice. But we must take things as they are, and make the best of them. It seems very much like hypocrisy on the part of the Bombay Government to require the aid of law in smashing Mr. Tilak. Cowper says:—

> Hypocrisy, detest her as we may,
> May claim this merit still, that she admits
> The worth of what she mimics with such care,
> And thus gives virtue indirect applause.

In this very indirect "applause" to the virtue of constitutionalism, which Government gives, lies our comfort. And laying that unction to our heart, we must proceed to do our duty as subjects of the British Government aspiring after that kind of emancipation which our English brethren enjoy directly under the light of Her Majesty's gracious eye. What seem like contests between the rulers and the ruled are inevitable. Really speaking, in the heart of hearts Government does not believe that we are disloyal. Nay, more, Government perfectly understands the ideal that we have placed before our eyes in directing our agitations and activities; and it has, so far, as a matter of fact, helped us onward to it by its own motion. But our rulers are human beings, and they naturally do not like to give us power. They *are* going

to grant us privileges of free citizenship by and by. But they are rather slow to give, and give us what they give only grudgingly. The interests of the ruled and the rulers, therefore, are in temporary but *immediate* antagonism. Worship at the shrines of Government and the people, at the same time, becomes incompatible ; and those who are really working for the good of *both*, the members of our political society and who would like to be appreciated as such, are forced to declare themselves on one side only. Men, working after a true ideal, have thus to find themselves between two divergent blades as of a pair of scissors and alas, to be clipped, when that divergence comes to a *point*. In this state of things, the only safe man is he who sits with folded arms disregardful of his country's good. He lets himself to be drifted, like helpless chaff, by the current of circumstances, and gets safety as a reward for his culpable indolence. The active man, with a will to work and a heart to feel for his country, is punished for what the country profits by through his labour and self-sacrifice. Nothing could be more perverse. But that perversity disappears when we lose sight of the present and give our eye to the future. It does not require very extraordinary wisdom to see that the phenomena, like those, we now witness, are only occasional and cannot at all be accepted as true signs of our destiny, though they be more or less true signs of the times. Even when the tide is rising the waves are seen to retire, and the present repressive measures of the Bombay Government do not, in fact they cannot, permanently shackle our progressive feet. Our cause is true, and it must advance. As individual rulers, by their unsympathetic nature, may become odious to the people, so also individual public workers may at times give offence to Government. Feelings of hatred and revenge may have play for the time. But we should be only imprudent to base our hopes or our fears on the decision of such side issues. In fact, we cannot afford to make our vision so narrow. The emancipation of our country is an event not of one day or one year. (By the emancipation of our country we mean the same independence under British sovereignty, which the English subjects in Britain or the colonies at present enjoy. We have to be explicit, because in these times one cannot afford to be even harmlessly ambiguous.) It is perhaps difficult to realise, but none the less true, that the struggles of peace and constitutionalism last longer, and are even more severe than those of war and lawlessness. "The free broad battle-field of thought" extends far wider than we can see or imagine; and whole generations have, in the cause of our country, to tread them. Those that feel sorry for Mr. Tilak, have they not a thought to give to his country for whose sake he suffers? It would be doing injustice both to Mr. Tilak and his country, if we concentrate our thoughts only on his undeserved sufferings. Does not Mr. Tilak serve his country even by his imprisonment ? Will he not have shown to his countrymen, that the course of constitutional emancipation, like that of love, does not run smooth, and that that course is not to be abandoned simply because there are dark pitfalls in it ? If there is any moral in the conviction of Mr. Tilak, it is this. Law does oftentimes go against justice and morality. In theory it may be even virtuous to go against law ; but in practice we must yield to law as it is, implicit obedience. In rendering this obedience, sometimes you may have to suffer ; but if Government, which is all-powerful, is shewing its respect for law by requiring its aid as indispensable, we must also shew *our* respect by meekly suffering its penalties as inevitable. All the while, however, we may remember, that if we are really conscious of our innocence and our honest endeavours to seek *public* good, *i. e.*, the good of the Government as well as the people, then we need not dread imprison-

ment and the rest of them. In the case of men with that consciousness, "stone walls," in a certain sense, "do not a prison make." The damp or the darkness of its vaults cannot quench or dim the spirit or the light of such minds. Imprisonment may be enforced loss of freedom, but it may not be also loss of reputation. Real public workers will never intentionally disrespect law, but sometimes laws themselves may be set or worked against them like traps or catchers. Their imprisonment, in such *accidents*, is a misfortune to be regretted, but they should on no account make us despondent. With a firm faith in our conscience and the sense of justice in our government, we must unceasingly work. Of course, as the quaker poet says:

"Thy task may well seem overhard,
Who scatterest in a thankless soil
Thy life as seed, with no reward
Save that which duly gives to soil."

Yet, as the same poet further advises:—

". . . do thy work, it shall succeed,
In thine or in another's day:
And if denied the victor's meed,
Thou shalt not lack the toiler's pay."

The Punjab Times, English Daily, Rawalpindi, September 29, 1897.

Mr. Tilak should know that while he has been branded as a seditionist by the High Court of his Presidency, the sympathy of thousands of his countrymen and others, not overpowered by race prejudice, is with him. Those portions of the Anglo-Indians, whose prejudice does not allow them to relish the true interest of the natives of the soil, are very jubilant at the result of the case proving unfavourable to the condemned patriot. Mr. Tilak was only a few months ago a Councillor of State, and the Anglo-Indian papers were profuse in using the "Hon'ble" before his name; but they have not the common courtesy now to use the word "Mr." before his name, when writing about him. This shows nothing but feeling against the "Blackie" editor. * * *

The scribblers and penny-a-liners of the Anglo-Indian newspapers ought to know that the condemned editor is still the honourable and honoured gentleman, and a sincere and self-sacrificing patriot, in the eyes of his countrymen, although technicalities of law with novel interpretation have condemned him as a disloyal subject of Her Majesty.

The Cochin Argus, English Weekly, September 18, 1897.

The Executive Government have scored a victory, and Mr. Tilak has been ruined. No doubt those who had all along believed in the guilt of Mr. Tilak will complacently accept the verdict as justifying their views. But to those who had awaited the result of the trial with an open mind its conclusion will be disappointing. * * *

As the existence of strong racial feeling in connection with this case is undeniable, the presence of a majority of Europeans on the Jury would naturally lead Mr. Tilak's fellow-countrymen to doubt the justice and fairness of the majority verdict on which he has been condemned.

PART II.—GENERAL ASPECT.

Section (b).—Anglo-Indian Press.

The Morning-Post,—N. W. P.

Althought the Government has secured a verdict in the case against the Hon. Mr. Tilak, there will be a widespread feeling amongst the community, especially the natives, that the prosecution has been unjust and vindictive. In the calm surroundings of Upper India, we fail to see how any person, literate or illiterate, could be roused to feel hatred against the Government by anything that Mr. Tilak wrote, but the inhabitants of Bombay have been led to a different view being taken. But apart from this, what the Government has done, has really been to alter the law regarding sedition without notice. For years writings have been allowed to appear in the native papers from week to week as bad as anything Mr. Tilak wrote, and no notice was taken of them. If any offence was committed, the Government altogether condoned the offence. If it was decided to adopt a stricter interpretation of the law, the Government was bound in fairness to give notice of its change of policy. And at any other time the Government would have done this. Why, then, because two murders have been committed, which the Government has altogether failed to prove had anything whatever to do with the writings in the press, and which it is probable were wholly due to the mismanaged plague operations, is the Government introducing a new law, or, what is the same thing, giving an interpretation to a law which by its own acts in by-gone years it has given the public to understand is not the right interpretation? When the other prosecutions for sedition are finished, we propose to consider the whole question of the liberty of the press, which at present, under the rule of Lord George Hamilton, appears to be in serious danger.

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We are not surprised at an appeal being made with regard to the Tilak case. The learned Judge's definition of "disaffection" is quite new to us. Any one may feel hatred against the Government; any community may hate the acts of Government and condemn them in the strongest terms, but neither of these is sedition. The essence of sedition lies in stirring up active and unconstitutional resistance to the acts of Government, and we fail to see how anything Mr. Tilak wrote can be said to have done this. The verdict was carried by the smallest majority that could have been accepted, but any way the Jury are almost entirely in the hands of a Judge in such a case. If a Judge tells a Jury, "You are on your oath bound to take the law from me. You have no responsibility as to the construction of the law. The law defines disaffection to mean, etc., etc.," then the jury who have sworn to well and truly try, have no choice but to say the prisoner did what the Judge tells them his acts according to law amounted to doing.

Advocate of India, Bombay Anglo-Indian Daily, September 15th.

THE TILAK CASE.

The conviction of Mr. Tilak by the very narrowest majority which could have secured that result, and the sentence which followed conviction, will go far to complete the confusion into which the public mind has been thrown by the press prosecutions. This is the second. The crime is that of exciting, or attempting to excite,

by words intended to be read, feelings of disaffection to the Government established here by law. In the first of the two cases the obscure editor of an obsc ure paper has been convicted by a Sessions Judge, the two Assessors differing from him, and has been sentenced to penal servitude for life. In yesterday's case the jury were six to three. If they had been five to four a conviction would not have been secured. As it was, Mr. Justice Strachey, to whose conscientious and careful cond uct of the case too much praise cannot be given, was of the same opinion as the maj ority of the jury. Tilak, therefore, stood convicted. His personal responsibility to our mind is infinitely greater than that of the Satara editor. But Tilak was sentenced to eighteen months' imprisonment. There are more trials to come, and by the end of them the plain man may possibly have discovered what Section 124A of the Penal Code means, and how it is to be applied. But the process of education, as it is being carried on here, is a slow and staggering one. Assuming, as we believe to be the case, that the two Judges who have now dealt with the point are in substantial agreem ent on it, the question cannot be said to be satisfactorily closed. The meaning of the word disaffection is a question on which every man who has taken in English with his mother's milk is competent to come to a conclusion for himself. In our humble opinion disaffection no more means the opposite of affection than does disaffected mean the opposite of affected. You must take words as they are used, and general references to prefixes and their force of the kind on which Sir Comer Petheram relied are as likely to mislead as to guide. As disaffection is used in English, it implies a distinct reference to a relation of inferior and superior which is entirely absent from the word affection, alleged in Sir Comer Petheram's judgment to differ from it only by the force of the prefix dis. As Mr. Pugh well put it, when a man has ceased to love his wife, you do not talk of his entertaining feelings of disaffection to her. A regiment is disaffected when it is on the border of mutiny. A people is disaffected when it is in a similar frame of mind towards its rulers. The doctrine—for that is what it comes to—that there canno co-exist in the same heart an absence of affection and on absence of disaffection to the Government established by law in British India is grammatically erroneous, and, as we believe, politically dangerous. If it is to be upheld we shall have to lengthen the cords and strengthen the stakes of our prisons here.

There is only one other view of this trial on which we propose to offer a remark. Speaking on the last day of the session but one, Lord George Hamilton, professing that his mouth was closed until this trial should have tak en place, pledged himself to the House that it, with other proceedings to which objection was being taken, would unravel the plot which led to the murders of Mr. Rand and Lieutenant Ayerst. Whatever else the Tilak trial has effected, and its effects, we fear, are likely to be many and far-reaching, it has not secured—and the fact should be noted—the one object on which Lord George Hamilton based his justification of the proceeding to the House of Commons.

The Times of India, Anglo-Indian Daily, September 15th.

Mr. Tilak was yesterday found guilty by a Bombay Jury of attempting to incite disaffection against the Government, and was sentenced by Mr. Justice Strachey to eighteen months' imprisonment. The sentence certainly does not err on the side of severity, but it carries a lesson with it which every good citizen

must hope will not be lost upon the followers and imitators of the Editor of the *Kesari*. Of the justice of the conclusion arrived at by the jury there can be no doubt. The defence was conducted by counsel of eminence, and must be assumed to have been put forward with whatever strength was inherent in it. On the other hand the case for the prosecution was presented with conspicuous fairness, and an absence of endeavour to press for a conviction which the other side readily recognised. The jury had the advantage of having the case summed up to them with a clearness, and an orderly arrangement of facts and principles which must have made their task an easy one. . . . . He has had a fair trial, conducted under circumstances which certainly put him under no disadvantage. The punishment which has been imposed upon him is the reverse of vindictive, but it carries an impressive lesson with it which will no doubt be taken to heart in quarters where there has long been serious need for it.

The Bombay Gazette, Anglo-Indian Daily, September 15.

The sentence is undoubtedly a merciful one, having regard to the gravity of the charges on which the prisoner was found guilty. But it is sufficient for the ends of justice. It is impossible not to share the regret feelingly expressed by Mr. Justice Strachey that a man of the undoubted abilities and exceptional energy of Mr. Tilak should have placed himself in such a position by endeavouring to create disaffection against the Government at a time when they were straining all their resources to protect the people from plague and famine.

The Pioneer, Anglo-Indian Daily, Allahabad, September 21.

Though the Tilak trial is over and very well over, the question still remains more or less open as to what is, and what is not, a seditious writing within the meaning of the Penal Code. Tilak has presented, it is said, a petition to the Chief Justice of Bombay, praying for a revision of Mr. Justice Strachey's interpretation of the law. If it results in giving us a ruling of the Full Court *in banco*, we will at any rate have a decision whose authority it would be idle to deny. As matters stand, a single decision by one judge can hardly be said to conclude the question. . . . . The gravamen of the charge against him (Tilak), lay not so much in that he caused certain words to be written and published, but that he seized on a particular time in which to write and to a particular section of the people, adding fuel to a fire already smouldering. The editor of a Rangoon paper, let us say, who published a translation of the very articles for which Tilak has been convicted, if put on his trial at all, would probably be acquitted by a jury, however illogically, perhaps on the ground that such a publication would fall flat in Burma and create very little interest of any sort, much less, disaffection to Government. And it is obvious that the circumstances of each particular case—the time, the place, and the audience—must be considered in deciding the guilt or innocence of the individual by throwing light on the probable intent with which he was animated.

But where is the line to be drawn between fair though hostile criticism that is not seditious and accurate and truthful criticism that may yet amount to sedition? Probably this is a question that can only be answered by a jury on a given case.

arising out of given facts: and perhaps, it is safer that it should be so. . . . .

. . . .

It is true that the test to be applied in a given case is not whether disaffection has been caused by a publication, but whether it was the probable and natural intended result of the publication. . . . . It may be objected that this interpretation of the law cripples the so-called liberty of the Press, and practically stifles all open hostile criticism of unpopular Government measures in a disaffected community. To take, as an instance, the case of Poona. If the Hindus there, were as bitter against the plague regulations as they were represented, what criticism of those regulations, it may be asked, however mildly worded, if it expressed disapprobation and was distributed amongst a class of sympathisers, could fail to excite disaffection, that is, a feeling of hatred, dislike, and so forth. It, surely, would avail nothing to wind up a violent article denouncing unpopular measures by a few bald platitudes, exhorting the malcontents, nevertheless, to loyally obey the hated regulations, to do what lay in their power actively to, and prevent attempts at resistance and disobedience. It would read like a taunting sarcasm and sneer. On the other hand, are the malcontents to have no voice lest in raising it, they excite others less educated than themselves to resort to unlawful resistance. . . . , ... The safeguard that liberty of expression and criticism shall not be stifled lies in the fact that the sanction of Government is a necessary preliminary to a prosecution, and experience has shown that Government, so far from being more to precipitate action, is only too slowly stirred by public opinion, which may be trusted to see that the Government does not act without due cause.

Civil and Military Gazette, Anglo-Indian, Lahore.

The Poona Press prosecution in the Bombay High Court has ended in the acquital of the printer of the *Kesari*, but in the conviction of the Editor, the Hon'ble Mr. Bal Gangadhar Tilak, Additional Member of the Bombay Legislative Council, who has been sentenced to eighteen months' imprisonment. The jury of nine, which was composed of five Europeans, two Hindus, a Muhammadan,* and a Parsi, were divided, six finding him "guilty" and three "not guilty" The Judge, concurring in the verdict of the majority, accepted it, and in his judgment laid stress on the fact that in passing sentence, he bore in mind the work that Tilak had performed in connection with the plague. We believe that the result of the trial will meet with very general approval throughout the country; it was only at the beginning of the week that the *Champion*,† a native paper published in Bombay, declared that "all have faith in the High Court," and it was the High Court who found the prisoner guilty, for Mr. Justice Strachey had the power to refuse to accept the finding of the majority, even as Sir Comer Petheram did in the *Bangabasi* case. The words of Mr. Justice Budroodin Tyabjee have been verified, that the law, as it stands, is sufficient protection against seditious writing and incitement to disaffection against the Government as by law established. There is no occasion to review the history of the case; its special importance lies in the fact that the accused was a man of influence and of wealth. He had the means to employ the highest abilities of the Bar in his defence, and his position declared that Government in the matter of sedition are no respecter of persons. The lesson of this trial will not be forgotten for many

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* The juror was not a Mahomedan but a European Jew.

† "The Champion" is Anglo-Indian.

years; it has occurred none too soon; violent language and virulent abuse had come to be regarded as the right fashion in which to criticise the actions of Government. A change has already taken place, and the conviction of Tilak gives an assurance of the permanence of the healthier tone. From the outset we have been averse to any Press Act; and now the latest ruling of the Bombay High Court on Section 124A of the Indian Penal Code makes it unnecessary to adopt any new measures for keeping the Native Press within the limits of reasonable and honest comment.

The Champion, September 19, English Weekly.

Mr. TILAK.

We, in the first place, must persevere in the work we are doing. That is, we must on all occasions bring the grievances of the country before those who rule it, and by steady constitutional agitation, we shall in time give the lie to those who slander the leaders of the Indian people. That plan of action, of course, is obvious. But what is to be done *now*? A leader of the Mahratta Brahmans, a man of great scholarship, and, we believe, a man of the strictest honesty, has been found guilty of sedition. Are we to throw him over, in order to prove that our opponents were right when they charged an influential Hindu with disloyalty, and when they said we were wrong in accepting such a man as a leader in Western India? We do not think so. To adopt such a course would stultify our past utterances, and it would be unworthy of a people who desire the goodwill of decent, respectable men. We, at any rate, decline to look upon Mr. Tilak as a sedition-monger, for we know the man, and, although in most things we are opposed to him, we shall not kick him when he is down. We are prepared to admit that he is an irreconcilable, that he is indiscreet, that he has written and said that which had better not have been said, but that he, or any other educated Indian, desires, even if he had the power, to overthrow the British *râj*, we know to be false. Mr. Tilak is no fool, and he is fully aware that English rule here means education, peace and prosperity, and that its absence would be followed by ignorance and chaos. Very well, how comes it then that a jury has certified to the contrary? In our opinion the prejudice, which has been fostered by evil-minded journalists, has so affected the European community that it was almost impossible for Mr. Tilak to have escaped. This prejudice not only exists here, but it has, as we have already intimated, been rampant in England; and in the words of Mr. Pugh, the counsel for the defence "from the form of the sanction (for prosecution) which had been put on record it appeared that the local Government must have received instruction, from home." This being so, it is plainly evident that Mr. Tilak has to thank sensational journalism for his present position. We feel certain that had Lord Sandhurst been permitted to follow the bent of his own mind, he would not have initiated this political trial. And we are glad to notice in the *Jam-i-Jamshed*, of the 17th instant, a telegram from Poona, which tends to confirm our belief. Our contemporary informs its readers that 'it is rumoured that, in the course of private conversation with some leading native gentlemen of Poona, His Excellency expressed sentiments to the effect that the present state of things causes him much pain.'

The Case not to Rest Here.

In the meanwhile it is satisfactory to learn that the case is not to rest here, and Mr. Tilak's legal advisers are going to take the matter to the Privy Council, if they

possibly can, and we are advised that they can do this. And we hope they will do so, not for Mr. Tilak's sake merely but for the sake of public criticism in this country; because, if Mr. Justice Strachey's definition of the law is to hold good, as the *Advocate of India* correctly puts it, "The doctrine—for that is what it comes to—that there cannot co-exist in the same heart an absence of affection and an absence of disaffection to the Government established by law in British India is grammatically erroneous, and, as we believe, politically dangerous. If it is to be upheld, we shall have to lengthen the cords and strengthen the stakes of our prisons here." Precisely, and if this be good law, there is not a journalist in India who does not run the danger of being imprisoned; even—horrible thought—the *Times of India* might be found guilty of sedition. And the time might come when the editor of that journal might find himself standing in the dock charged with seditious writing, instead of, as in the present case, unblushingly sitting on the Judge's *dais* listening to the passionate pleadings of a man as honest as he, and much more courageous. But we do not wish that fate to fall upon the gentleman in question, and we would rather that Mr. Justice Strachey's law was upset.

Mr. Tikak Helped the Government.

That remark reminds us that the *Times of India* may thank its lucky star that Mr. Tilak was found guilty of sedition, for had he been acquitted, our friend would have had a heavy libel case on hand. And even now we are not sure that our contemporary is out of the wood. But more of this on a future occasion. We are glad to notice that Mr. Justice Strachey cleared Mr. Tilak of the horrible imputation made on his character in regard to the dastardly Poona murders. Said his Lordship, alluding to the Poona Plague operations:—"Amongst a considerable portion of the people accusations were made against the British soldiers to the effect that they had insulted women and committed other deeds in regard to which no evidence, so far as I know, has been forthcoming. The result was what you would expect amongst people of that kind—easily alarmed and suspicious—and they regarded the measures taken as an unwarrantable interference in their domestic affairs. It was a very difficult position both for the Government and the people. The inevitable result was friction and a state of tension and excited feeling that went on for a considerable time and culminated in the murders on the night of June 22nd of Mr. Rand and Lieut. Ayerst. The officer in Poona who had charge of these operations was abominably murdered. I mention that simply to show the state of excitement which existed at that time. I do not wish to suggest in any way that there is the relation of cause and effect between either of those articles and that abominable murder. The Advocate-General said he could not prove that these murders were caused by these articles, and for that reason I ask you to put that idea out of your minds. But what is clear is that a state of feeling was so excited as not to be equalled by anything that had happened for a long time past." What now becomes of the more than hint thrown out by certain people, some in high places, that this trial would give a clue to the plot which had culminated in the murders of Lieut. Ayerst and Mr. Rand? We are all looking forward to this unravelling, for the idea was firmly implanted in the public mind, that the trial would in some way put us on the track of the assassins. But Mr. Justice Strachey brushes the imputation on one side, and, to the amazement of the ignorant public, it was shown that Mr. Tilak had rendered valuable help to the Government during the time of the plague in Poona.

The Statesman, Anglo-Indian Daily, Calcutta, October 3, 1897.

The surprise which must have been created in the minds of all who considered the questions, raised in the light of either reason or precedent, or of judicial policy—for there is such a thing—by the rejection, by the Full Bench of the Bombay High Court, of the application, made on behalf of BAL GANGADAHUR TILAK for leave to appeal to the Privy Council against his recent conviction, will not have been diminished by a study of the grounds on which it was based. The Bench admit Mr. Justice STRACHEY'S definition of "disaffection" as including mere absence of affection to have been erroneous. In other words, they admit that there was misdirection of the jury, and that upon a point which might be of vital importance to the accused. But they hold that this is not sufficient ground for granting the application, because the jury could not have been misled by the error. Not only, however, was it obviously impossible for the Bench to know that the jury—who do not disclose the grounds of their verdict—were not misled by this wrong interpretation of the law, but, as they were bound and were directed to take their law from the Judge, it is clear that to hold that they were not misled by it, is, by implication, to assume that they held the writings which were the subject of the prosecution to have been calculated to excite more than mere want of affection, and this assumption the Bench plainly had no right, either legally or logically, to make. There is another point, moreover, in which, though we are not certain that it was raised by the applicant, there seems to us to be very little doubt that there was a misdirection of the jury. As far as we can gather from the published reports of the trial, the Judge appears to have ruled that it is immaterial to the question whether the writings which formed the subject of the prosecution fell within the scope of the Section, or not, what degree of the feelings comprised under the terms "disaffection" they were calculated to excite. It is as much opposed to right reason, however, as it would be fatal to liberty, to hold that writings, or other utterances or expressions, other than comments on the measures of Government of the kind excluded by the Explanation, which are calculated to excite any degree whatever of ill-will against the Government, fall within the scope of the Section. It cannot be reasonably doubted that, although the Legislature specified no degree of disaffection, they used the word in a technical sense, or that it was their intention that, in order to bring "words spoken or intended to be read," or any of the other forms of expression mentioned in the general clause of the Section within its scope, they must be calculated to excite such a degree of ill-will or hostility to the Government as their author, with the exercise of reasonable care and ordinary intelligence, might be expected to know were likely to weaken the authority of the Government or provoke disobedience of, or resistance to, it. The decision of the Bench is greatly to be deplored, because, apart altogether from the question whether the verdict was substantially just or not, Mr. Justice STRACHEY'S decision and interpretation of the law create a state of uncertainty as to what may or may not be held to constitute seditious writing or speech, which is fraught with far more danger to the public interest than even the license which the Government has so long tolerated.

The Indian Daily News, Anglo-Indian Daily, Calcutta.

We very much regret the conviction of Mr. Tilak. We have always been opposed to the prosecution, because we believed it to be a grave blunder, and because we believed that an acquittal or a conviction would be equally disastrous to the best interests of India. The Government would have suffered a good deal from an acquittal: but we believed that a conviction would create a thousand times more disaffection than that which the Bombay Government were so anxious to suppress. A conviction, moreover, under the circumstances, which the experience of the *Bangabasi* trial more or less clearly foreshadowed, would, we believed, be simply disastrous. Those reasons were that the prosecution would make the matter a race question, and that the case would be conducted as in Calcutta, with all the bitterness of an Irish prosecution for treason. This is precisely what has happened.

Owing to the reluctance of natives to acknowledge that they understand English, there is considerable difficulty in getting natives on the special Jury lists in the Presidency towns and there is a large preponderance of European jurors on those lists. In the *Bangabasi* case, which was not conducted by the Advocate-General but by two extremely zealous advocates, one of whom was Mr. Pugh—now 'hoist with his own petard'—it was obvious that when the eight challenges allowed to the defence (in England there are twenty challenges allowed) were exhausted, the Government could practically choose its own jury. The preponderance of European names on the list was great, and when the defence passed a juryman he was immediately challenged by the prosecution. The result in the *Bangabasi* case was that there was one native on the jury to eight Europeans—in a case in which we think it was eminently desirable and eminently fair to have a considerable proportion at least of natives. This result astonished Sir Comer Petheram, who, with all his faults, had the instincts of an Englishman, and was, we believe, the reason of his declining to accept a verdict of seven to two. A good deal of the question turned on the right interpretation of the native language which it was only reasonable that natives should have some voice in. As we anticipated, the same procedure has been followed in Bombay. The Government having begun the prosecution unwisely, their legal advisers seem to have thought it absolutely necessary to strain every nerve for a verdict, and adopted precisely the same course as in Calcutta They have, of course, been within their rights. It is possible that a Native jury would not have convicted; it was morally certain that a European jury would do so, and by the simple device of challenging every person passed by the defence, including six Natives and one European, and favoured by the constitution of the jury lists, they secured a jury of six Europeans, including Mr. Sassoon, and two Hindus and one Parsi. The defence challenged its full eight. The Crown challenged seven times, and the verdict was—as most people foresaw—six to three. This was eminently smart; but, of course, is not lost on the Native mind, which does not think it eminently fair. We, ourselves, looking at it as Englishmen—and looking at, we believe, from as high a standpoint and with as firm a belief in the rights of Englishmen as any one in the country—also think it was not fair and not wise. We ourselves believe very firmly that unless Europeans are tried by European jurors, we might just as well leave the country; but we think we ought to be prepared to concede something to natives in matters which affect them peculiarly.

The course taken by the Advocate-General in Bombay, though perfectly in order (*summum jus summa injuria*), has resulted in throwing immense discredit on the whole proceedings, and the stern impartiality and indifference of the prosecution, which is the main merit of an English prosecution, seems, we regret to say, to have been quite lost sight of. In a case which amounted to a State trial, and to which the whole of India was eagerly looking, there was all the more necessity for a display of that indifference by Government advisers. Nothing will now get it out of the heads of natives that there has been a twist in the proceedings, and the last state of the native mind will be worse than the first. This is what we anticipated. It is no consolation, however, to think that we have been right. We look upon the whole thing as a profound disaster which will have very far-reaching effects indeed on the relations of Europeans and natives—effects which will equal the disaster to India produced by the Ilbert Bill; and this is not a matter of congratulation, either for the Government, or, indeed, for any one who has the welfare of India at heart. And we believe that we have it as much to heart as most people.

The Arakan News, English Bi-Weekly, Akyab, Sep. 29.

The procedure of the Bombay High Court from the beginning to the end will appear to all men of reason as queer and not without a tinge of prejudice. It was proved beyond doubt that the man Tilak had no ill-will towards the Government and that he co-operated with the Poona Plague Committee and did all he could to help the committee with his words of advice as well as with actions. The justification of the murder of Afzal Khan by cunning Sivaji seemed to be purely an academical discussion, in which not only the Poona Brahmins took part but even some Europeans and the *Times of India* itself.

* * *

The authorities under the British Government are in the place of *loco parentis*, and the more forbearance they show towards their erring children the more good feeling will exist between them both. "To spare the rod and spoil the child" is an exploded theory, and we earnestly hope that the Bombay Government will not insist on the theory being carried any more into practice.

The Arakan Times, English Tri-Weekly, Akyab, Burma.

We shall not be surprised in the least to read in next week's Indian newspapers that Lord Sandhurst entertained his "many friends and admirers" to a sumptuous and fashionable banquet in glorious honour of Tilak's conviction. On the other hand poor Tilak must be groaning out in his lonely and desolate cell. "Lord, Lord! Save me from European friends!"

* * *

Mr. Tilak commanded, and verily deserved, the sympathy of all India. These sympathies were not confined to, and did not emanate from, the one direction—the Marhatta Brahmin; but other communities as well felt for the unfortunate man including many Europeans both in India and in England. Mr. Tilak has been socially crushed, morally degraded to the lowest level, and physically he has yet to

suffer. But even after the expiry of eighteen months, *deo volenti*, he will cast off his jail manacles and return to his friends *not* as a sinner and an outcast, but as a martyr and a hero!

The Mahomedan Advocate of India, English Monthly, Madras.

Our worst fears have been realized; a leading citizen of Poona and one of the sturdiest of the little band of Indian patriots, working earnestly on behalf of the people there, has been consigned, after a trial, of which we shall say more by and by, to a prison cell, to the great indignation of the country, which, in spite of the calamity that has befallen him, will ever regard him as a popular hero, a champion of justice and a martyr to the cause of liberty. The administration has triumphed, but the country is more than ever discontented, which takes much of the gloss out of the success achieved by authority alarmed for its own security. There is a confirmed impression abroad that the Government, flushed with victory, may direct its hostile attention to others, who have rendered themselves obnoxious to it by their bold and trenchant criticisms of men and measures, and that the liberty of the Press will be at the mercy of those, who, in a generous moment, endowed the country with the boon, and in a season of stress and heat display an impolitic disposition not to revoke it—for that can never be—but to terrorise it into obsequiousness, incompatible with strength and the duty it has to discharge as the sole paladin of the people. . . . . The Tilak case must be regarded as the opening combat of a great struggle, which should find us with our loins girt and our armour on. Reactionary ideas are now rampant, and against them it is necessary to take precautions betimes.

From The ĀRĀM]

OUT AT LAST!

[Sept. 25. 1897.